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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Report on the situation of human rights in Cuba submitted by the Special Rapporteur, Mr. Carl-Johan Groth, in accordance with Commission resolution 1992/61

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I. INTRODUCTION

1. During its forty-eighth session, the Commission on Human Rights had before it the report on the situation of human rights in Cuba prepared by the Special Representative of the Secretary-General, Mr. Rafael Rivas Posada, pursuant to the mandate conferred by Commission resolution 1991/68 (E/CN.4/1992/27 and Corr.1). At the same session, the Commission adopted resolution 1992/61 of 3 March 1992 entitled "Situation of human rights in Cuba". In paragraph 6 of that resolution, the Commission requested its Chairman to designate the Special Representative as its Special Rapporteur to review and report on the situation of human rights in Cuba. In paragraph 9 of the resolution, the Commission requested the Special Rapporteur to carry out his mandate, bearing in mind the Universal Declaration of Human Rights, and to report to the Commission at its forty-ninth session on the results of his endeavours under the same agenda item, and to submit an interim report to the General Assembly at its forty-seventh session.

2. In a letter dated 18 March 1992, the Special Representative, Mr. Rivas Posada, informed the Centre for Human Rights in Geneva of his decision not to accept the designation of special rapporteur given to him in the above-mentioned resolution.

3. In a letter dated 10 April 1992, the Chairman of the Commission on Human Rights at its forty-eighth session informed the Under-Secretary-General for Human Rights that, as Mr. Rivas Posada was no longer able to continue his mandate, the designation of a special rapporteur could not be accomplished until another person had been designated to replace Mr. Rivas Posada. The Chairman of the Commission therefore invited the Secretary-General to appoint a special representative who would subsequently be designated as the Commission's special rapporteur. In the same letter, the Chairman, at the request of the Bureau of the Commission, asked for legal advice on the interpretation of paragraph 6 of Commission resolution 1992/61.

4. In a note verbale dated 27 April 1992 from the Permanent Representative of Cuba to the United Nations addressed to the Secretary-General (see annex I), and a note dated 4 May 1992 from the Permanent Mission to the United Nations Office at Geneva, addressed to the Under-Secretary-General for Human Rights, the Government of Cuba, in the light of the decision taken by Mr. Rivas Posada, transmitted its interpretation of resolution 1992/61 and of paragraph 6 in particular. The second note verbale stated, inter alia:

> "...the Chairman of the Commission at its forty-eighth session has no mandate to take it upon himself to designate a person other than Mr. Rafael Rivas Posada as Special Rapporteur ... since the wording of operative paragraph 6 is clear, precise and does not allow for the designation of another person ...
>
> "Similarly, the Secretary-General of the United Nations lacks the power to designate another special representative to replace Mr. Rafael Rivas Posada since ... this is not a case of the Special Rapporteur having relinquished his functions or died; quite the contrary, Mr. Rivas Posada, Special Representative, took up and completed the mandate conferred under Commission resolution 1991/68 and Economic and Social

Council decision 1991/252; he did not accept the designation of Special Rapporteur given to him in operative paragraph 6 of resolution 1992/61.

"For all the foregoing reasons, it would be necessary to wait until the forty-ninth session of the Commission before considering this issue, since a specific decision from the Commission is needed in order to amend the wording of operative paragraph 6 of resolution 1992/61 ..."

5. On 30 April 1992 the Under-Secretary-General for Legal Affairs transmitted to the Under-Secretary-General for Human Rights the legal opinion requested (see annex II), which reads, in part, as follows:

"Nothing in the resolution indicates that its object and purpose is limited to Mr. Rivas Posada. It does not refer to him by name. No provision of any of the relevant Commission decisions of which we are aware refers by name to the individual who had been designated 'Special Representative'. It is the usual practice in the United Nations to consider 'Special Representatives' or 'Special Rapporteurs' as organs of the body establishing them, in this case the Commission on Human Rights. Absent a different intention expressed by the body establishing the post, the resignation or death of the person holding the post does not, in and of itself, end the mandate. Rather, a new appointment is normally made so that the work can continue in fulfilment of the particular mandate, usually in the same manner as prescribed for the initial appointment."

6. The Economic and Social Council, it is decision 1992/236 of 20 July 1992, endorsed Commission resolution 1992/61.

7. On the basis of the foregoing, the Secretary-General decided to appoint Mr. Carl-Johan Groth, of Swedish nationality, as his Special Representative for Cuba replacing Mr. Rivas Posada and, on 31 August 1992, the Chairman of the Commission designated Mr. Groth as Special Rapporteur.

8. As provided in Commission resolution 1992/61, the Special Rapporteur submitted an interim report to the General Assembly at its forty-seventh session (A/47/625), and on 18 December 1992 the General Assembly adopted resolution 47/139, entitled "Situation of human rights in Cuba", whereby it decided to continue consideration of that item at its forty-eighth session. The present report is basically an update of the interim report and, as such, seeks to make an analysis of the most pressing problems which Cuba faces at present in the field of human rights, in so far as the Special Rapporteur was able to assess them in the light of the information received.

9. Pursuant to the mandate conferred on him, the Special Rapporteur took into consideration information from a wide variety of sources and expressed his willingness to receive any person or group wishing to meet him. During one of his visits to the United Nations Centre for Human Rights in Geneva, he talked with representatives of the non-governmental organizations, American Association of Jurists, International League for the Rights and Liberation of Peoples and Latin American Federation of Associations of Relatives of Disappeared Detainees. He also went to New York from 28 to 30 September 1992, where he had the opportunity to meet individuals and representatives of the

following organizations and groups active on the subject of human rights in Cuba and operating in the United States of America, mainly in New York and Miami: the Cuban Committee for Human Rights, the Committee to Support the Human Rights Movement in Cuba, the Centre for Human Rights, the Coordinating Body for Human Rights Organizations in Cuba, the World Federation of Former Cuban Political Prisoners, the Cuban Democratic Coalition, the Cuban Christian Democratic Party, Freedom House, the Valladares Foundation and Americas Watch. Subsequently, during his visit to New York in November 1992 for the presentation of his interim report to the General Assembly, the Special Rapporteur met representatives of the Liberation Christian Movement and the Puebla Institute. The Special Rapporteur also visited Madrid on 13 and 14 October where he had occasion to meet Cuban citizens in exile and representatives of the Cuban Committee for Human Rights in Spain and the Association for Continental Peace (ASOPAZCO). In addition to those mentioned, other organizations, such as Amnesty International (International Secretariat), the Information Bureau of the Cuban Human Rights Movement, based in Miami, and the Geneva Initiative on Psychiatry, provided the Special Rapporteur with valuable information.

II. COOPERATION OF THE GOVERNMENT OF CUBA WITH THE SPECIAL RAPPORTEUR AND OTHER PROCEDURES OF THE COMMISSION ON HUMAN RIGHTS

10. A few days after his appointment, the Special Rapporteur addressed a letter to the Permanent Representative of Cuba to the United Nations Office at Geneva requesting the cooperation of the Government of Cuba in carrying out his mandate and the opportunity to visit the country. To date, the reply of the Government of Cuba to his request has been negative, having regard to its intention to reject resolution 1992/61, as repeatedly stated in the Commission on Human Rights, the Economic and Social Council and the General Assembly.

11. For its part, in its resolution 47/139, the General Assembly made an appeal to the Government of Cuba to cooperate with the Special Rapporteur by granting him access to the country in order to establish contacts with the Government and citizens of Cuba and thus fulfil the mandate entrusted to him.

12. In those same international forums, the Government has repeated its willingness to cooperate with all the other procedures established by the Commission on Human Rights which may be applied to any country, in particular the procedure established under Economic and Social Council resolution 1503 (XLVIII) and the thematic procedures. With regard to the latter, the Special Rapporteur has observed that the Special Rapporteur on summary or arbitrary executions, the Special Rapporteur on the question of torture and the Special Rapporteur on the question of religious intolerance, as well as the Working Group on Arbitrary Detention and the Working Group on Enforced or Involuntary Disappearances, transmitted to the Government, particularly in 1991 and 1992, communications on complaints received within the framework of their respective mandates.

13. The Special Rapporteur on summary or arbitrary executions indicates in his report to the Commission (E/CN.4/1993/46) that during 1992 he transmitted to the Government of Cuba two urgent appeals on behalf of five persons sentenced to death. He also transmitted complaints about one person who had reportedly died in detention, three who had allegedly been shot dead by the

police or the army and two who had reportedly received death threats. Concerning all those cases, the Government sent replies, which are reflected in paragraphs 224-226 of the above-mentioned report.

14. The Special Rapporteur on the question of torture indicates in his report (E/CN.4/1993/26, paras. 117-157) that he transmitted to the Government 17 cases of detainees in the Combinado del Este prison and 11 other prisons in the country, who had allegedly been ill-treated in 1991 or had been denied medical attention. Again, the Government sent replies regarding all of them.

15. The Special Rapporteur on the question of religious intolerance includes in his report (E/CN.4/1993/62, para. 24) the reply sent by the Government regarding 12 cases transmitted to it by the Special Rapporteur in 1991.

16. The Working Group on Arbitrary Detention also addressed several communications to the Government in 1991 and 1992. In its report to the Commission on Human Rights at the current session (E/CN.4/1993/24), the Group reports on 69 decisions taken regarding the same number of cases transmitted to the Government. In 19 of them, the Group decided that the deprivation of liberty was arbitrary and 50 were filed because the persons in question had been released or because insufficient information was available.

17. Finally, the Working Group on Enforced or Involuntary Disappearances transmitted to the Government, in 1992, the case of one person thought to have disappeared in 1990. Again, the Government forwarded a reply with respect to that case (E/CN.4/1993/25, paras. 188-189).

18. In the cases dealt with under the procedures referred to, which also appear in the present report because they occurred in 1992, the reply of the Government is also reflected in the report.

III. LEGAL AND CONSTITUTIONAL FRAMEWORK

19. Cuba is a party to the following international human rights instruments: the International Convention on the Elimination of All Forms of Racial Discrimination; the International Convention on the Suppression and Punishment of the Crime of Apartheid; the International Convention against Apartheid in Sports; the Convention on the Prevention and Punishment of the Crime of Genocide; the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity; the Convention on the Rights of the Child; the Convention on the Elimination of All Forms of Discrimination against Women; the Convention on the Political Rights of Women; the Convention on the Nationality of Married Women; the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages; the Slavery Convention; the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery; and the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others.

20. Provisions concerning the protection of human rights appear in the 1976 Constitution, which was amended by the National Assembly of People's Power in July 1992. Most of the articles on human rights are in chapter VII, entitled "Fundamental rights, duties and guarantees" (arts. 45-66), article 62 of which provides:

> "None of the freedoms which are recognized for citizens can be exercised contrary to what is established in the Constitution and the law, or contrary to the existence and objectives of the socialist State, or contrary to the decision of the Cuban people to build socialism and communism. Violations of this principle are punishable".

Furthermore, there are other chapters or specific articles of other chapters which also make reference to human rights. For example, chapter V relates to "Education and culture" and chapter VI to "Equality".

21. The reform of July 1992 introduced into the Constitution a new chapter VIII on the state of emergency. The sole provision of this chapter, article 67, provides as follows:

> "In the event of the existence or imminence of a natural disaster or catastrophe or any other circumstances which by their nature, scale, or importance are detrimental to the internal order, the security of the country or the stability of the State, the President of the Council of State may declare a state of emergency in all or part of the national territory and make arrangements for the mobilization of the population during the period for which the state of emergency remains in effect.
>
> "The manner in which the state of emergency is declared, its effects and its termination are governed by law. The fundamental rights and duties recognized by the Constitution, the exercise of which must be regulated differently during the period for which the state of emergency remains in effect are also determined by law."

22. Furthermore, article 93 (i) provides that, in the event of the declaration of a state of emergency, the President of the Council of State and Head of Government "shall report on his decision, as soon as the circumstances permit, to the National Assembly of People's Power or to the Council of State, if the former is unable to meet, for the appropriate legal purposes".

23. The Constitution also lays down the basic principles governing the territorial organization of the State and the functioning of the State organs, in particular the National, Provincial and Municipal Assemblies of People's Power. The constitutional reform changed the system for electing deputies to the National Assembly (a body which has constituent and legislative power) and to the Provincial Assemblies by establishing in article 71 that they shall be elected by the free, direct and secret vote of the electors. Before the reform, deputies were elected by the Municipal Assemblies of People's Power, which also elected the delegates to the Provincial Assemblies. In future, the latter will also be elected by popular vote (art. 135).

24. In accordance with the provisions of the Constitution, a New Electoral Law was adopted on 29 October 1992. Article 67 of this Law provides for the

establishment of commissions of national, provincial and municipal candidatures, whose duties are to prepare and submit proposals for candidatures to the various assemblies. Under article 68, these commissions are composed of representatives of the various mass organizations, in other words, the Central Organization of Cuban workers, the Committees for the Defence of the Revolution, the Federation of Cuban Women, the National Association of Small Farmers, the Federation of University Students and the Federation of Secondary School Students. Elections to the Municipal Assemblies were held on 20 December 1992.

25. Chapter XIII of the Constitution lays down a series of basic principles on the functioning of the courts and of the Office of the Attorney-General of the Republic. In that regard, article 121 provides that "the courts constitute a system of State bodies, structured in such a way that they operate independently of any other such body and are hierarchically subordinate to the National Assembly of People's Power and the Council of State". The reform deleted from the Constitution the former article 123, which provided, inter alia, that the main objectives of the courts' activities were to maintain and strengthen socialist legality. According to the information received by the Special Rapporteur, this hierarchical subordination established in the Constitution itself is largely inconsistent with the Basic Principles on the Independence of the Judiciary 1/ and, in the final analysis, raises serious doubts as to the ability of courts to ensure respect for the safeguards of due process established in the Universal Declaration of Human Rights.

IV. RIGHTS TO FREEDOM OF OPINION, ASSEMBLY AND ASSOCIATION

26. The Special Rapporteur has examined the extent to which these rights are protected in Cuban society in the light of the following provisions of the Universal Declaration of Human Rights:

> "Article 19: Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."
>
> "Article 20(1): Everyone has the right to freedom of peaceful assembly and association."

27. The Special Rapporteur also took into account Commission on Human Rights resolution 1992/22, entitled "right to freedom of opinion and expression", adopted without a vote on 28 February 1992. In that resolution, the Commission referred to the link between violations of the right to freedom of opinion and expression and violations of other fundamental rights, such as the rights to liberty, security, life, privacy, peaceful assembly, protection against torture, and freedom of movement and religion; considered that the effective promotion of the human rights of persons who exercise the right to freedom of opinion and expression is of fundamental importance to the safeguarding of human dignity; appealed to all States to ensure respect and support for the rights of all persons who exercise the rights to freedom of opinion and expression and the rights to freedom of thought, conscience and

religion, peaceful assembly and association, and the right to take part in the conduct of public affairs, or who seek to promote and defend those rights and freedoms and, where any persons have been detained solely for exercising those rights as laid down in the International Covenant on Civil and Political Rights, to release them immediately; also appealed to all States to ensure that persons seeking to exercise those rights and freedoms are not discriminated against, particularly in such areas as employment, housing and social services, or harassed; and invited the Special Rapporteurs to pay particular attention, within the framework of their mandates, to the situation of persons detained, ill-treated or discriminated against for having exercised the right to freedom of opinion and expression.

28. Various provisions of the Cuban Constitution, and the following in particular, are relevant to the protection of the rights mentioned above.

> Article 7: "The Cuban Socialist State recognizes and encourages the mass social organizations [...] which comprise various sectors of the population, represent the specific interests of the same and involve them in the tasks of building, consolidating and defending socialist society".
>
> Article 53 "Citizens are recognized to have freedom of speech and of the press in keeping with the objectives of socialist society. The material conditions for the exercise of that right are provided by the fact that the press, radio, television, the cinema and other mass media are State or social property and can never be privately owned, thus ensuring that they are used exclusively in the service of the working people and the interest of society".
>
> Article 54: "The rights of assembly, demonstration and association are exercised by the workers, both manual and intellectual, peasants, women, students and other sectors of the working people, who have the necessary means available for that purpose. The mass social organizations have all the facilities they need to carry out such activities, in which their members enjoy the broadest freedom of speech and opinion, based on the unlimited right of initiative and criticism".

29. The information received by the Special Rapporteur from individuals and non-governmental groups suggests that the framework of protection established by these provisions and the manner in which they are applied do not duly conform to the principle laid down in the Universal Declaration of Human Rights, because persons associated with groups whose purpose is to denounce violations of human rights, or groups of differing tendencies which are critical of the current political system, are harassed, even though their actions are perfectly peaceful and they address the authorities in a respectful manner. Furthermore, these groups that have emerged in recent years have not been able to obtain legalization since the numerous applications to the Ministry of Justice for legalization under the Associations Act have gone unanswered. 2/

30. As to freedom of association, the Group which visited Cuba pursuant to Commission on Human Rights decision 1988/106 asked the Government the

following questions (E/CN.4.1989/46, para. 58), which the Special Rapporteur considers to be still valid and relevant: "If an organization's application for registration is rejected, what options remain open for persons who wish to exercise their right to associate freely? Are any judicial remedies available? What are the criteria used to approve or reject an application for association? Might this provision limit the options of association, especially political options, and therefore of assembly and expression of persons who do not wish to exercise their rights of association, assembly and expression necessarily through the mass social organizations recognized, protected and promoted by the State? If this is the case, would the channels for political participation be reduced to those organizations which are promoted by the State, thereby eliminating the possibility of the emergence of organizations opposed to the regime?". According to the same report, the Minister of Justice stated that, three years previously, the National Assembly had adopted the Associations Act, which stipulated that associations must be registered and which set forth the requirements for their functioning (ibid., para, 59).

31. As regards the scale of the human rights violations referred to in the present section, the Special Rapporteur considers it worth mentioning, as an example, a document prepared by the organization "Americas Watch", dated 30 September 1992 and updated in January 1993, in which it is stated that more than 250 people associated with human rights groups have been detained since 1989. At least 50 of them have apparently been serving sentences of up to 10 years for their activities in this connection. Others are being held in custody pending trial. At least half of the total have been in custody since September 1991. Many others have remained in custody for short terms in police or State Security Department premises.

32. The principal limitations on the enjoyment of those rights are described below.

A. Trial and sentencing

33. An Amnesty International report of December 1992 indicates that it is difficult to estimate the number of persons sentenced for political reasons since the authorities do not provide information on them, the activities of the national groups which try to follow up these cases are severely restricted and, for some time now, the international human rights organizations have not been allowed access to the country. However, Amnesty International estimates that there are at least 300 to 500 of them at present and that possibly half of them have been sentenced for trying to leave the country illegally. 3/ As stated earlier, Americas Watch supplied the Special Rapporteur with a list of 51 persons, which appears in Annex III.

34. The Special Rapporteur received a wealth of information from various sources about the cases of persons sentenced for offences against State security such as "enemy propaganda", "spreading false information against international peace" and even "rebellion"; for offences against the administrative and judicial authorities, such as "contempt"; or for offences against public order such as "possession of unlawful printed matter" or "unlawful association", to sentences which the persons reporting them regarded as extremely harsh considering the acts to which the accusations related, such

as painting slogans on walls, printing and distributing literature considered to be against the Government, organizing peaceful demonstrations, or belonging to organizations considered illegal.

35. The crime of rebellion is characterized in articles 98 and 99 of the 1987 Penal Code as follows:

> Article 98: "1. Any person who takes up arms in order to achieve by force any of the following purposes shall be sentenced to deprivation of liberty for 10 to 20 years, or to death:
>
> "(a) To prevent in whole or in part, even if temporarily, the principal organs of the State and of the Government from carrying out their functions;
>
> "(b) To change the economic, political and social regime of the socialist State;
>
> "(c) To change, in whole or in part, the Constitution or the form of government established thereby;
>
> "2. The same penalty shall apply to any person who undertakes any act designed to foster an armed uprising, should such an uprising occur; should such an armed uprising not occur, the sentence shall be deprivation of liberty for 4 to 10 years."
>
> Article 99: "Any person who undertakes any other act designed, directly or indirectly, to achieve a purpose indicated in the preceding article, by violence or other unlawful means, shall be sentenced to deprivation of liberty for 7 to 15 years, unless the act constitutes a greater crime."

As regards the said crime, the Group of Government representatives which visited Cuba pursuant to decision 1988/106 of the Commission on Human Rights asked the Government the following questions: "What is meant by 'or other unlawful means'? Does it mean, for example, that members of any unregistered association that might seek partial changes in the Constitution or the economic, social or political regime in Cuba may be charged with rebellion for having used unlawful means to achieve one of the objectives set forth in article 98, paragraph 1?" (E/CN.4/1989/46, annex XVI).

36. The crime of enemy propaganda is perhaps the one most frequently used as the basis for sentencing persons on political grounds. In one list of persons reportedly serving sentences in 1992 on political grounds, which was prepared by a national group and received by the Special Rapporteur, some 280 of those were recorded as having been sentenced for this crime, which is characterized in article 103 of the Penal Code as follows:

> "1. A sentence of deprivation of liberty for one to eight years shall be incurred by any person who:

"(a) Incites against the social order, international solidarity or the socialist State, by means of spoken or written propaganda or in any other form;

"(b) Makes, distributes or possesses propaganda of the type mentioned in the preceding subparagraph;

"2. Any person who disseminates false information or malicious predictions such as are likely to cause alarm or unrest in the population, or public disorder, shall be sentenced to deprivation of liberty for one to four years;

"3. If mass media are used to carry out the acts referred to in the preceding paragraphs, the sentence shall be deprivation of liberty for 7 to 15 years;

"4. Any person who permits the use of mass media as referred to in the preceding paragraph shall be sentenced to deprivation of liberty for one to four years."

37. Also as regards this provision, the aforesaid Group of Government representatives visiting Cuba in 1988 asked the Government the following questions: "What is meant by incitement 'against the social order, international solidarity or the socialist State'? Could this article be used to prevent the free exercise of political criticism and the control of the authorities by the people? Could it constitute a threat to persons who disagree with government policy, both in Cuba and abroad? Lastly, the fact of using the media to express opinions at variance with those of the Government constitutes, in accordance with article 103, paragraph 3, of the Penal Code, an aggravating circumstance as regards the offence defined as enemy propaganda. Would this article constitute a threat to persons who oppose the political regime in Cuba? Would this imply recognition by the criminal law of the prohibition of the use of the media to express opinions at variance with those of the Government?" With reference to the offence of causing alarm, the following questions were asked: "How is it determined when an act, because of the nature, means or occasion of its execution, 'tends to cause public alarm with the aim of creating conditions affecting the security of the State'? What is meant by 'security of the State' and by 'causing Alarm'?" (E/CN.4/1989/46, annex XVI).

38. On the offence of contempt, article 144 of the Penal Code states that:

"1. Anyone who threatens, slanders, defames, insults, abuses or in any way outrages or offends, orally or in writing, the dignity or honour of an authority, civil servant, or his agents or assistants, in the exercise of their duties or on the occasion or on account thereof, shall be subject to deprivation of liberty of three months to one year, or a fine of 100 to 300 cuotas (units of currency) or both.

"2. If the action referred to in the previous paragraph is carried out with respect to the President of the Council of State, the President of the National Assembly of People's Power, the

members of the Council of State or of the Council of Ministers or the Deputies to the National Assembly of People's Power, the penalty shall be deprivation of liberty of one to three years."

39. In the context of the above provision, the Group asked: "What form of political criticism might be defined as not offensive and not insulting to the political authorities? Could this article constitute an obstacle to compliance with the constitutional provision granting the people the right to control its representatives and possibly revoke their mandate?" (E/CN.4/1989/46, annex XVI).

40. By way of example, the following are brief descriptions of some cases coming to the attention of the Special Rapporteur that were brought to trial in 1992.

(a) Miguel Angel Ballester Cintas, a member of the National Council for Civil Rights in Cuba from the township of Diez de Octubre, was arrested on 31 July 1992 and taken to the State Security Department in Havana on a charge of enemy propaganda. According to the indictment, Mr. Ballester was arrested after having sent the Council of State a letter, dated 10 April 1992, in which he renounced the medals awarded to him during the campaign in Angola.

(b) Marco Antonio Abad Flamand and Jorge Crespo Díaz were arrested in late 1991 and taken, respectively, to the Combinado del Este and Guanajay prisons. They were accused on a count of enemy propaganda for having produced a documentary entitled Un dúa cualquiera, which was shown as a try-out in Costa Rica and, according to the report of the Attorney-General's Office, repeatedly attacked the integrity of Fidel Castro, the President of the Council of State and the Council of Ministers, using epithets considered to be insulting and offensive. At the trial in October 1992, the prosecution called for a sentence of eight years' imprisonment.

(c) Santiago Medina Corzo, a physician, was tried on 8 May 1992 at the Santa Clara Provincial Court on charges of enemy propaganda. He was sentenced to four years in prison for having put up a poster - in his Motembo clinic - calling for freedom for political prisoners.

(d) Yndamiro Restano Díaz, a member of the Cuban Human Rights and National Reconciliation Commission and Chairman of the social democratic movement Armonía (MAR), and Maria Elena Aparicio, the coordinator of MAR, were sentenced on charges of rebellion to 10 and 7 years in prison, respectively, by the Havana Provincial Court. Yndamiro Restano had been arrested on 20 December 1991 in the Havana district of Vedado and had been kept for several months without legal aid and without being charged. He was subsequently transferred to the Guanajay prison. The charges were apparently based on the attempts by Mr. Restano's movement to publish a bulletin which allegedly urged civil disobedience. According to the information available, although MAR is of a distinctly pacifist nature and has, since its establishment in 1990, constantly and publicly rejected the use of violence, the prosecutor accused the defendants of recruiting followers and promoting action designed to destroy the country's existing regime, by violent means if necessary.

(e) Sebastián Arcos Bergnes, Vice-Chairman of the Cuban Committee for Human Rights, was arrested in Havana in January 1992 by officers of the State Security Department. A few days before his arrest, during the trial for terrorism, sabotage and enemy propaganda of three men who had been detained on attempting to enter the country illegally, one of the accused was reported to have given the name and address of Sebastián Arcos Bergnes, and of two other leaders of the Committee, Gustavo Arcos Bergnes and Jesús Yanes Pelletier, as persons to contact in the event of problems. The three were arrested the next day. While Gustavo Arcos and Jesús Yanes were released 24 hours later, Sebastián Arcos Bergnes remained under arrest on charges of rebellion. In October 1992, he was sentenced to four years and eight months' deprivation of liberty for an offence of enemy propaganda. In its decision 42/1992 (Cuba), the Working Group on Arbitrary Detention of the Commission on Human Rights considered that Mr. Arcos' detention was arbitrary, being in contravention of articles 9, 10, 11, 19 and 20 of the Universal Declaration of Human Rights and articles 9, 14, 19 and 21 of the International Covenant on Civil and Political Rights. Consequently, the Group requested the Government of Cuba to take the necessary steps to remedy the situation (E/CN.4/1993/24).

(f) Angel González Santos was arrested after displaying a poster reading "Down with Fidel" and shouting anti-Government slogans in the streets of Guanabacoa on 19 October 1991. The prosecutor called for a seven-year prison term on charges of enemy propaganda.

(g) Eduardo Vidal Franco, a doctor of internal medicine, Jorge Vázquez Méndez, a university physics student, and Rigoberto Carcelles Ibarra, a specialist at the Academy of Sciences, all members of the Liberation Christian Movement, were charged for "enemy propaganda" and sentenced at Santiago de Cuba in June 1992 to prison terms of six years (Mr. Vidal) and five years (Mr. Vázquez and Mr. Carcelles). According to the prosecutor's provisional conclusions, the charges related to the printing and distribution of "Counterrevolutionary pamphlets stating 'Down with Fidel. Unite for your Country'."

(h) Omar del Pozo Marrero, Chairman of the National Civic Union, was arrested on 19 April 1992. At his trial in August 1992 on charges of revealing State Security secrets (article 95 of the Penal Code), he was sentenced to 15 years in prison. Mr. del Pozo was reported to have obtained information on States Security agents who had infiltrated human rights groups.

(i) José López Quinta, a university professor, was tried on charges of enemy propaganda in the Santa Clara Provincial Court on 5 June 1992 because he had sent a letter to the Rector of the Central University stating his disagreement with government policy and the need for changes in the country. The prosecutor called for an eight-year prison term.

(j) Carlos Pérez Truebas and various other individuals linked to human rights groups in Holguín were arrested on 22 January 1992 by State Security agents. All were released some days later except Carlos Pérez Truebas, who was charged for enemy propaganda in Case No. 2 of 1992 having been found in possession of the first draft of a book containing political poems.

(k) Orlando Valdés González was arrested in Céspedes, Camagüey province, on 12 March 1992 for making remarks in a shop about the high price of tobacco. As a result of oral proceedings in the Céspedes Municipal Court on 20 March, he was sentenced to three months' correctional labour;

(l) Pedro Mejías Febre, René Domínguez, Mirla Herrene, Julio Benítez, José Naranjo and Flavio Fuentecilla, members of the Cuban Committee for Human Rights in the city of Guantánamo, were arrested on 9 January 1992. Mr. Mejías was severely beaten during his arrest and on various occasions up until his trial in the Provincial Court, when he was sentenced to one year's deprivation of liberty for unlawful association. The other persons mentioned were sentenced to six months' deprivation of liberty for the same offence.

(m) Bienvenida Cúcalo Santana, Secretary-General of the Cuban Female Humanitarian Movement, and Joel Dueñas Martínez, a member of that Movement, were arrested in Havana on 31 December 1991. Mrs. Cúcalo was released on bail. Mr. Dueñas Martínez, an epileptic, was taken in turn to the Tenth Police Station, the "Villa Marista" detention centre of the State Security Department, the Havana Psychiatric Hospital, the Carlos J. Finlay Military Hospital, the Combinado del Este Prison and the Taco-Taco Prison in Pinar del Rio. At the trial in September 1992, Mr. Dueñas was sentenced to four years' imprisonment, and Mrs. Cúcalo to three years' imprisonment, for enemy propaganda.

(n) Luis Alberto Pita Santos, Chairman of the Association for the Defence of Political Rights (ADDEPO), was arrested in Havana on 9 October 1991. He was initially held at the Sixth Police Station before being moved in turn to the Psychiatric Hospital, the Carlos J. Finlay Military Hospital and the Valle Grande Prison. He was put on trial in April 1992 and sentenced to five years' imprisonment for contempt, unlawful association, incitement to break the law and possession of illegal printed matter.

(o) José Luis Pujol Irízar, a founder member of the Criterio Alternativo and Proyecto de Apertura de la Isla (PAIS) groups, was arrested in Havana on 3 March 1992 and taken first to the Department of Technical Investigations and later to the Micro-10 Prison in Alamar. In September 1992, he was sentenced to three years' deprivation of liberty for contempt, for having criticized President Fidel Castro in a letter addressed to someone abroad.

41. A necessary comment with respect to this list of incidents and the way that the law is applied in each case is that it is completely impossible to express views which in any way run counter to the official line, even if addressed to the authorities respectfully.

B. Threats and intimidation

42. The Special Rapporteur also received information concerning a large number of cases in which individuals were apparently subjected to threats or intimidation by agents linked to the State Security apparatus for reasons connected with their exercise of the right to freedom of opinion, assembly or association. In some cases, the threats were reported to have been made in the course of questioning carried out after such individuals were summoned to

police or State Security premises. Thus, for example, 26 intellectuals were summoned to Villa Marista, the State Security headquarters, in early August 1992, where they were questioned and threatened because they had signed and sent a message to the Heads of State and Government attending the Second Ibero-American Summit which requested help in persuading the Government to recognize the existence of dissident groups, to respect the right to freedom of expression and to facilitate dialogue. A police record was established for each one of them, including a handwriting sample and a signed statement. This is also true in the case of Luis Enrique González Pérez, who was threatened in the course of questioning at a police station in Havana, at the intersection of Calle 15 and Dolores, where he was summoned on 26 May 1992. During the questioning, he was accused of being a member of the Liberation Christian Movement, collecting signatures for a bill introduced to the National Assembly of People's Power in 1990 by Oswaldo Payá, the movement's national coordinator, and distributing clandestine propaganda.

43. At other times the threats are made during visits to the home or workplace of the person in question, or the persons are subjected to verbal and/or physical abuse in the street. Thus, for example, it is reported that Mr. Juan Betancourt Morejón was assaulted on 21 February 1992 by two individuals who shot at him from an unloaded pistol and threatened to kill him if he persisted in his activities as General Secretary of the Cuban Pro-Human Rights Party. Mr. Betancourt subsequently went into exile. Meanwhile, it is reported that Mr. Lázaro Linares Echavarría, a member of the Cuban Human Rights and National Reconciliation Commission, was summoned on 28 July 1992 to an office of the revolution defence committees on Calle Aguila, between Puerta Cerrada and Vives in Old Havana, by a State Security officer and other representatives of government organizations, who threatened him with physical harm. This also happened in the case of Mr. Ignacio Hidalgo Gómez, a member of the Cuban Committee for Human Rights in Holguín: he was threatened by a State Security Department officer who visited him at his workplace on 13 April 1992. Subsequently, on 17 April, he was assaulted by various individuals in the street.

44. Situations similar to those described also occurred in 1992 in the cases of Rolando Prats, a member of the Democratic Social Movement; Lázaro Corp Yeras and Manuel Manrique Zulueta, members of the Steering Committee of Cuba's General Union of Workers; Laercy del Prado Maceo, a member of the Cuban Committee for Human Rights delegation from Palma Soriano; Lázaro Alberto Fernández Hidalgo, a delegate of the National Council for Civil Rights in Cuba from San Antonio de los Baños; Oswaldo Paya and Dagoberto Capote Mesa of the Christian Liberation Movement; Félix Fleitas Posado of the Association for Constitutional Democracy; and Betsy Becerra of the Committee of Independent Mothers for Granting Amnesty to Political Prisoners.

45. One particular form of intimidation is that of performing so-called "acts of repudiation" or protests organized - apparently officially - by the "Rapid Response Brigades", in which a large group of individuals, some of whom are said to have been identified as members of the security forces in civilian clothing, gathers around the home of a person alleged to be involved in what are seen as counter-revolutionary activities, shouts insults and threats for several hours and does damage to property. Some members of the Communist Party are also reported to have been expelled from the party for refusing to

join the Rapid Response Brigades, and students are said to have been threatened by school authorities for the same reasons. In many cases, the police are present at such acts of repudiation but do not intervene; sometimes, at the end, they proceed to arrest the individuals who are "repudiated".

46. By way of example, this sort of treatment is reported to have been applied this year to Mr. Fernando Núñez, who underwent an "act of repudiation" by a group of some 200 people in front of his home on 28 January 1992 after having sent a letter to the newspaper Granma criticizing one of its articles.

47. Mr. Francisco Chaviano González, Chairman of the National Council for Civil Rights in Cuba, underwent an "act of repudiation" in front of his house in Jaimanitas, Municipio Player, Havana, on 14 July 1992. The next day, the officer in charge of the Jaimanitas sector was reported to have begun summoning a large number of young people who had come to Mr. Chaviano's assistance and to have threatened to put them on record as "dangerous". In addition, a guard was said to have been prominently mounted in front of his home for the purpose of intimidation, together with a display of posters announcing that Mr. Chaviano was changing his address.

48. The family of Luis Alberto Pita Santos (see para.40 (n)) was also the subject of an "act of repudiation" on 31 January 1992 in front of its residence in Havana. Luis Pita y Nivaldo and Jorge Daniel Pita Santos, father and brother of Luis Alberto Pita Santos, were ill-treated and a number of human rights activists (Lázaro Loreto Perea, Angel Viera, Fernando Núñez and Rafael García) who happened to be at their house at that time were arrested by officials of the Ministry of the Interior and taken to the Sixth Police Station but were released on the same day.

49. Mrs. Angela de la Coba, Chairwoman of the Committee of Independent Mothers for Granting Amnesty to Political Prisoners, was also the subject of an act of repudiation on 7 April 1992 carried out by a group of journalists, in addition to being frequently harassed together with other members of her Committee. Moreover, on 29 May 1992, members of the Rapid Response Brigades and the State Security Department used threats and a show of force to prevent members of this Committee from holding a meeting in the Las Mercedes church.

50. During December 1992, Mr. Gustavo Arcos Bergnes of the Cuban Committee for Human Rights, whose house was surrounded on 10 December and was still under surveillance at the end of the month, together with Mr. Jesús Yáñez Pelleitier, 75 years of age, and Mrs. Aida Valdés Santana, who are also members of this Committee and were severely beaten, were victims of incidents of this kind. At the same time the houses of the following persons were placed under surveillance: Vladimiro Roca, President of the Social Democratic Movement; Osvaldo Payá, President of the Liberation Christian Movement, Néstor Castellanos, President of the Solidarity and Peace group; Amador Blanco, Chairman of the José Martí Human Rights Commission; Rolando Prats of the Social Democratic Movement; and Gustavo Peña Escobar of National Democratic Convergence.

51. Incidents such as those described above suggest that, apart from the cases which are mentioned in the preceding section and are more striking because custodial penalties were imposed, the authorities also appear to be implementing a deliberate policy to intimidate human rights activists by methods that are unacceptable in any society where the rule of law holds sway.

C. Temporary detentions

52. The Special Rapporteur also received case reports on persons who, for exercising the rights of opinion, assembly or association, had been held in custody for a few hours or a few days, interrogated and later released without being charged. Undoubtedly, in these cases the aim was to intimidate the detainees. For the duration of their detention, detainees are often kept incommunicado: they are not allowed to contact their families (who do not know their whereabouts) or to have access to legal counsel. In some cases, such persons are forced to sign, before their release, so-called "official warnings". 4/

53. The following cases are some of those of which the Special Rapporteur has taken cognizance:

(a) Lorenzo García, an activist of the Cuban Committee for Human Rights of Holguín, was arrested by State Security officials in the centre of Holguín in the course of his investigations into the arrest on 25 June 1992 of a number of youths. He was taken to the First Police Station and interrogated for four hours by a State Security official who tried to make him sign a warning.

(b) María Valdés Rosado, President of the Cuban Christian Democrat Movement, was arrested on 23 September 1992 and taken to the State Security building at Calles Aldavoz and Cien where she underwent an interrogation and was threatened before being released two days later. Since May 1992, she has been harassed by State Security forces and her telephone conversations have been continuously tapped.

(c) Pedro Luis Girón Bermúdez, a resident of Havana, was arrested on 3 March 1992 in Ciudad de Nueva Gerona, Isla de la Juventud, and taken to a local State Security Station where he was interrogated and warned that he would be brought before the courts if any evidence was found that he was involved in any human rights activity in that municipality.

(d) Heriberto Acebedo and Héctor Pachá were arrested on 5 March 1992 in Ciudad de Nueva Gerona, Isla de la Juventud, after thorough searches of their homes where some pamphlets with the Universal Declaration of Human Rights, a typewriter and other personal belongings were seized. They were taken to the Nueva Gerona State Security office and interrogated. Héctor Pachá was detained for five days.

(e) Elizardo Sánchez Santa Cruz, President of Cuban Democratic Concertation, was arrested in Havana on 10 December 1992 by State Security agents who beat her severely as well as causing damage to her house. She had to be taken to hospital as a result of her injuries. She was later transferred to the detention centre of the Technical Department of

Investigations at Calles Cien and Aldavoz. She was accused of creating a public disturbance and released on bail. During the current year, Mrs. Sánchez Santa Cruz has been arrested on a further two occasions.

(f) Also arrested on 10 December were Rodolfo González of the Cuban Committee for Human Rights, detained by State Security agents who searched his home, and Adolfo Miranda Calderón of the Confederation of Democratic Cuban Workers. At the time this report was completed, they were still in detention, and proceedings had been instituted against Rodolfo González on a charge of spreading false information.

D. Loss of jobs

54. According to reports, this type of intimidation is particularly cruel because it is impossible for the persons affected to find other jobs within their profession as the State is the sole employer. The following specific cases were reported:

(a) Dimas Cecilio Castellanos, a philosphy professor at the Havana Institute of Advanced Agricultural Sciences, was expelled from his department in early 1992 after he was accused by the university authorities of having in his possession a tape recording of the so-called "Synthesis of the Social Democratic Project". His dismissal also meant that he was banned from teaching in any of the country's centres of learning.

(b) Georgina González Corvo, Danilo Alonso Santana, Rafael González Dalmau, Miguel Morales Acosta, Ramsés Pérez Menéndez, Pedro Rubio Castillo and Rafael Sariol, lecturers at the José Antonio Echevarría Advanced Politechnical Institute in Havana, were fired from their jobs in January 1992 after signing a letter demanding amnesty for political prisoners, respect for human rights and democratic reforms. José Ricardo Muñoz, a researcher, and María Martínez Martínez, a secretary, were also fired for signing the letter. Three other signatories, Néstor Castellanos Martínez and Carlos Delgado Abad, lecturers at the Enrique José Varona Advanced Educational Institute, and Luis Brito López, a graduate, who had shown their solidarity with their colleagues, were also fired a few days later.

(c) Juan Antonio Rodríguez Avila, a computer technician, was fired at the Empresa de Proyecto de Industrias Varias, which belongs to the State Committee for Economic Cooperation, during this year for dissenting from the official line of the Communist Party and supporting the proposals of the Christian Liberation Movement for a bill calling for a national dialogue.

(d) Néstor Baguer, a journalist of the National News Agency and Radio Cadena Habana; Manuel Díaz Martínez, of Radio Enciclopedia and an editor at the Cuban Radio and Television Institute; and Vladimiro Roca, who worked at the State Committee for Economic Cooperation, were fired for sending to the Central Committee of the Communist Party a document entitled the "Social Democratic Project" which proposed democratic changes and reform of the Constitution. That Project had been sharply criticized in editorials of the local dailies, Granma and Juventud Rebelde, of 21 January and 16 February 1992 respectively. After his dismissal, Vladimiro Roca was the target of an "act

of repudiation" in front of his house on 20 February 1992. Another signatory of this document, Enrique Julio Paterson, was summoned to the Villa Marista and interrogated on 6 February 1992.

(e) Aida Rosa Jiménez Rodríguez, Secretary of the Pro-Democractic Civic Association, was expelled from her post as Spanish and literature teacher at the Gervasio Cabrera education centre in July 1992. The reasons given in the letter of dismissal were that Mrs. Jiménez had requested permission not to participate in the assembly on outstanding work performance that was to be held at that centre since she considered her presence at the assembly to be pointless and rejected the political and revolutionary values of Cuban society;

(f) Ignacio Hidalgo Gómez, a member of the Cuban Committee for Human Rights in Holguín, was expelled from his place of work ("comunales municipal") in April 1992 for expressing views running counter to official State policy.

55. The Special Rapporteur also received information that some spouses of members of human rights groups were dismissed from their jobs in retaliation for the activities of their husbands. The following cases in particular were singled out:

(a) Xiomara González Figueroa was dismissed from the newspaper Juventud Rebelde where she had been working as a journalist for 23 years. The reason invoked was that she was "no longer fit to work in the organ of a political organization". The informers suspect, however, that the real reason is that Mrs. González is the wife of Fernando Velásquez Medina, leader of the Criterio Alternativo group who has been in jail since November 1991.

(b) Teresa Peña Pupo, wife of Jorge Daniel Pita Santos, member of the Association for the Defence of Political Rights, was fired from her job at the Los Galleguitos kindergarten, Havana, on 18 February 1992, after she had been warned several times by the headmistress about her matrimonial tie.

(c) Mayra González Castellanos, girlfriend of Sebastián Arcos Bergnes (see para. 40 (e)), was dismissed on 13 April 1992 from the National Sugar Cane Research Institute where she had been working for eight years. According to Dismissal Order No. 16/92 of the Sugar Cane Institute, to which the Special Rapporteur had access, the dismissal was due to "unreliability" because Mrs. González "maintains close relations with a citizen who is hostile to socialism and heralds capitalist ideas about human rights in Cuba, which is clearly at variance with the policy of our Institute". With respect to the last phrase, the Special Rapporteur would like to stress that, in his opinion, human rights are universal and cannot be linked to any specific ideology.

V. TRADE UNION FREEDOM

56. In line with what was stated in section IV, the Special Rapporteur received reports concerning the impossibility of establishing independent trade union organizations and the monopoly exercised in that regard by the Central Organization of Cuban Workers (CTC), the official trade union. According to the information received, in 1991 a group of workers set up, and requested legalization of, the General Union of Cuban Workers (UGTC).

However, they never received a reply to their request and indeed several members of UGTC, including its president, Rafael Gutiérrez, received threats.

57. The Special Rapporteur has found out that a complaint relating to substantially the same facts was examined by the Committee on Freedom of Association of the International Labour Organisation (ILO) at its 254th session, held from 16 to 19 November 1992. In this regard, it should be noted that Cuba has ratified both the Freedom of Association and Protection of the Right to Organise Convention (No. 87) and the Right to Organise and Collective Bargaining Convention (No. 98) of the ILO. Having considered the complaint, the Committee formulated the following provisional conclusions:

> "1024. The Committee notes that in the present case the complainant [the International Confederation of Free Trade Unions - ICFTU] has raised the following issues: (1) the failure of the Ministry of Justice to reply to the General Union of Cuban Workers' (UGTC) request for recognition and acknowledgement of its legal personality, in spite of the legal time-lapse of 60 days; and (2) the violent attack against Rafael Gutiérrez, president of the UGTC, by a 'rapid intervention brigade' which was part of a 'protest campaign' instigated by the Government, and the detention of the above-mentioned official for 48 hours without any charges being brought against him and no explanation being given as to the grounds for his arrest.
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> 1025. The Committee notes the Government's observations to the effect that: (1) the UGTC is not known, either by the workers, the general public or the social partners representing the various decision-making bodies within the industrial relations system; (2) there are more than 3.5 million workers in Cuba, of whom 96.7 per cent belong to trade union organizations of their own choosing; the so-called trade union organization mentioned by the ICFTU does not exist in the country, neither does it have any representativity whatsoever amongst Cuban workers; (3) Mr. Rafael Gutiérrez is not being held, neither are there any criminal charges against him; and (4) the AFL-CIO and the ICFTU have plans to interfere in Cuban trade unionism by promoting industrial sabotage and trying to bribe the trade union officials; these are anti-Cuban activities designed to bring about political destabilization.
>
> 1026. The Committee deplores the fact that the Government has not sent specific information on the failure of the Ministry of Justice to reply to the General Union of Cuban Workers' request for registration and recognition of its legal personality. Indeed, the Government merely stated that this organization 'does not exist', in spite of the fact that the statutes of this organization were communicated by the complainant and that the names of six persons were mentioned in these statutes. The Committee also deplores the fact that the Government also failed to provide information on the allegations concerning the violent attack against Mr. Rafael Gutiérrez, founder and president of the UGTC. In these circumstances, the Committee must point out that the right of workers to establish organizations of their own choosing implies, in particular, the effective possibility of forming, in a climate of full security, organizations independent both of those which exist already and of any political party. [...]. The Committee urges the Government to

send precise observations on these allegations to which it did not reply in a specific way and to decide, without delay, on the request for registration submitted by the UGTC, taking full account of the fact that under Article 2 of Convention No. 87, workers and employers, without distinction whatsoever, have the right to establish and join organizations of their own choosing without previous authorization.

1027. As regards the detention of the president of the UGTC for 48 hours, the Committee deplores the fact that the Government did not send specific information on this detention and merely pointed out that Mr. Gutiérrez was not 'being held' and that no criminal charges have been brought against him. The Committee therefore urges the Government to send without delay its observations on this matter. It draws to its attention the principle that when the authorities arrest trade unionists without a warrant or it is subsequently found that no grounds exist for conviction, this constitutes a clear violation of trade union rights. [...].

1028. Finally, as regards the Government's statements concerning the complainant organization's plans to interfere in the Cuban trade union movement, the Committee points out that any assistance or support that an international trade union organization might provide in setting up, defending or developing national trade union organizations is a legitimate trade union activity, even when the trade union tendency does not correspond to the tendency or tendencies within the country. The Committee also points out that the recriminations and value judgements which the Government makes in a general way against the complainant are not admissible, neither may they be taken into account as part of the procedure of the Committee, which is only authorized to examine complaints against governments and not against workers' or employers' organizations." 5/

58. Furthermore, the ILO Committee of Experts on the Application of Conventions and Recommendations, in its report to the 79th session of the International Labour Conference, held in June 1992, made the following observations regarding the application of Convention No. 87 by Cuba:

"[...] the Committee once again points out that certain sections of the Labour Code by referring explicitly to the 'Central Organization of Workers' of Cuba enshrines the system of trade union unity at the top level in the legislation. Accordingly, the Committee again recalls that in its General Survey of 1983 on freedom of association and collective bargaining, it made it clear, in paragraph 137, that even in a case where a de facto monopoly exists as a consequence of all the workers having grouped together, legislation should not institutionalize this factual situation, for example, by designating the single central organization by name, even if the existing trade union so requests. Even in a situation where, at some point in the history of a nation, all workers have preferred to unify the trade union movement, they should none the less be able to safeguard their freedom to set up, should they so wish in the future, unions outside the established trade union structure. [...].

[...] the designation of the CTC as the single organization at the central level in the legislation does not enable the workers to establish and join organizations of a different nature and independent of the public authorities, which is contrary to Articles 2, 3, 5 and 6 of the Convention." 6/

VI. RELIGIOUS FREEDOM

59. Article 18 of the Universal Declaration of Human Rights provides that:

"Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance".

60. The constitutional reform of July 1992 introduced important improvements in this area through a new article 8 reading as follows:

"The State recognizes, respects and guarantees religious freedom.

In the Republic of Cuba, religious institutions are separated from the State.

The different beliefs and religions enjoy equal consideration".

Moreover, article 55 provides:

"The State, which recognizes, respects and guarantees freedom of conscience and religion, also recognizes, respects and guarantees the freedom of every citizen to change religious beliefs or not to have any, and, subject to respect for the law, to profess the religion of his preference".

This provision replaces former article 54, which read:

"The socialist State, which bases its activity and educates the people in the scientific materialist concept of the universe, recognizes and guarantees freedom of conscience and the right of everyone to profess any religious belief and, subject to respect for the law, to practise the religion of his preference.

The law regulates the activities of religious institutions.

It is illegal and punishable by law to oppose one's faith or religious belief to the Revolution, to education or to the fulfilment of one's duty to work, defend the homeland with arms, show reverence for its symbols and fulfil other duties established by the Constitution".

In addition to these constitutional reforms, the IVth Congress of the Communist Party held in October 1991 decided that persons belonging to a religious group could also be members of the Communist Party.

61. Despite these improvements in the protection of the right to religious freedom, the Special Rapporteur received information concerning persons who were reportedly harassed for belonging to religious groups. Particular attention should be drawn to the following:

(a) Angel Gámez Argüelles was allegedly threatened by the police in connection with his membership of the Seventh Day Adventist Church in Duaba Arriba, Guantánamo province. Moreover, on 7 March 1992, the police reportedly prohibited him from holding a meeting with members of that Church.

(b) Eduardo Licea and his family, residents of Palmarito del Canto, Santiago de Cuba province, were allegedly harassed for belonging to the Jehovah's Witnesses Christian movement. Apparently a fine of 900 pesos was imposed on them after a bible and other religious literature had been found during a police search of their house.

62. With regard to the harassment to which, according to the information received, Jehovah's Witnesses are subjected, the Special Rapporteur would like to refer to the Government's reply to a communication on this subject from the Special Rapporteur of the Commission on Human Rights on religious intolerance, (E/CN.4/1993/62, para.24). According to this reply:

> "In Cuba, there are 41 congregations of the Catholic religion and 51 institutions or associations of Protestant congregations. In other words, any religious association or association that fulfils the requirements laid down in the existing Act on the Registration of Associations may operate and is highly respected and supported as such. However, the religious sect of 'Jehovah's Witnesses' [...] has never submitted an application for registration since it does not fulfil the requirements established for recognition and has therefore not acquired that status.
>
> In our country this religious sect is an unlawful association, whose members are known for their anti-social behaviour and who, in many cases, even engage in incitement to break the law and in the desecration of patriotic emblems, since they regard themselves as foreigners in their own country. In cases involving the above-mentioned criminal behaviour [...] the following articles of the current Penal Code are applied: article 207, paragraph 1 (Incitement to break the law); article 208 (Unlawful associations, meetings and demonstrations); article 210 (Possession of illegal printed matter)."

VII. RIGHT TO LEAVE AND ENTER THE COUNTRY

63. The Special Rapporteur considered the reports received in this area in the context of article 13, paragraph 2, of the Universal Declaration of Human Rights, which provides that "Everyone has the right to leave any country, including his own, and to return to his country".

64. Illegal departure from the territory of Cuba is defined as an offence in article 216 of the Penal Code as follows:

"1. Any person who, without fulfilling the legal formalities, departs from or takes action with a view to departing from the national territory, shall be liable to a custodial penalty for a term of one to three years, or to a fine of 300 to 1,000 cuotas (units of currency).

"2. If, for the purpose of the act referred to in the preceding paragraph, force or intimidation is used against persons, or objects are seized by force, the custodial penalty shall be for a term of three to eight years."

65. It was reported that in order for a citizen to leave the country legally, even for a short time, he or she has to have an exit visa, a formality that is in practice difficult to fulfil given the large number of applications, even though, in 1991, the minimum age for travel abroad was reduced to 20 for men and women - no doubt a significant step in this area. There is no right of appeal against an administrative decision to deny an exit visa, which means that the administration enjoys considerable discretionary power.

66. On this subject, the report of the mission undertaken to Cuba in accordance with decision 1988/106 of the Commission on Human Rights includes the following observations:

> "The President of the Council of State told the group that, generally speaking, his Government grants authorization so that people who want to leave the country can do so, the idea being that nobody should stay in Cuba by force. However, he said that there are some exceptions to this rule, including professionals and scientists, former officers in the Armed Forces, persons in possession of military secrets, deserters or their relatives, and young persons liable to military service. He went on to mention that, apart from these persons, there are many others who have permission to leave the country, but not the relevant visa, and the responsibility for this situation lies not with Cuba, but with the United States, the country to which most emigrants wish to go. He urged the United States and Western European countries to display a readiness to solve this problem and issue visas to all persons who want to leave Cuba." (E/CN.4/1989/46, para.86).

67. Immigration restrictions imposed by other countries, as mentioned in the above quotation, and other reasons such as the fear of the legal procedures (which, in addition to being complicated, have traditionally led to reprisals and discrimination) have made many people try to leave the country without applying for permission. In terms of the devices employed and the numbers involved, it can be said that most people who leave the country illegally do so by sea, using, among other things, tyres and small home-made boats kept afloat by anything buoyant, e.g. plastic containers, foam, tarpaulins, empty barrels, etc. Between the beginning of 1992 and the end of September, some 1,900 people are estimated to have reached, by sea, the United States or such other places as the Bahamas, Guatemala, Grand Cayman or the United States naval base at Guantánamo. At the same time, it is estimated that only one out of every four attempting to leave the country in this way succeeded.

68. It is also reported that many persons have been injured or have drowned at sea as a result of the violent methods used by the law enforcement forces in making arrests. It is reported, for example, that on 18 July 1992, 14 miles from the Cuban coast, coastguard vessel No. 554 rammed a makeshift raft carrying seven persons attempting to leave the country, destroying the raft and injuring the youths José Manuel Curiel, from Puentes, San Andrés y Obispo, Guanabacoa; Pablo Valentín Reyes Carrasco, from Corrales, between Nazareno and Bertematis, Guanabacoa; and José Raúl Batista Díaz, from Casablanca. On 30 August 1992, a raft carrying 15 persons was rammed by a torpedo boat, as a result of which the following persons were lost at sea: Pablo Torres Delgado, 28 years of age, Mercedes Rodríguez Luna, 17; Carlos Docal Luna, 13; Delia Guerra Saénz, 31; Alberto Guerra Sáenz, 26; Bernardo Aranda Ríos, 22; and Pedro Suárez Ramos, 28, all from San Miguel del Padrón.

69. Pursuant to article 216 of the Penal Code, charges are brought not only against those arrested after beginning the journey, but also against those under suspicion as persons who might try to leave. For instance, the Special Rapporteur received information concerning Oscar Fernández Garcia and Jorge Guerrero Batista, who were arrested on 7 October 1991 at a place known as Playa Covento in the Paraguay district of the province of Guantánamo. Those citizens were arrested on the grounds that they were in a prohibited zone; nevertheless, according to information received, at the time of their arrest, they were at a bus stop and, accordingly, in an unrestricted area. They were taken first to a police station in the city of Guantánamo, then to State Security premises, where they remained incommunicado for 23 days, and lastly to the prison in the city of Guantánamo. In May 1992, they were tried for attempting to leave the country illegally, and were sentenced to one year in prison.

70. Other cases of which the Special Rapporteur has been informed concern persons who were denied permission to leave the country, even though they had the appropriate entry visas from foreign countries. This was true of the following cases:

(a) Rolando Poque Malherbe, a researcher at the National Centre for Scientific Research, who was denied permission to leave the country in order to take up an appointment at a Spanish institution. He was also denied permission to travel to Venezuela, where he had been invited to give some lectures. According to Mr. Roque Malherbe, the reasons why his applications were turned down one after another had to do with the fact that he had, in the past, stated privately that he did not agree with Marxist ideology. He sees no merit in the arguments given by his superiors to justify the repeated rejections, namely that his presence at the Centre is indispensable, since in fact he has been marginalized in his research work and has even been threatened with dismissal;

(b) Ricardo López Castillo. In 1992, he was denied permission to leave the country for a period of five years because, according to what he was told at the Immigration Office, his son, a former conductor of the Afrocubana Orchestra, had left the country;

(c) Antonio Arturo Fernández Esquivel. For years he was refused permission to leave the country despite having a visa for the United States, where his mother lives. In 1983, Mr. Fernández Esquivel was dismissed from his post as a doctor at the Calixto García Teaching Hospital for having expressed political opinions opposed to the Cuban Revolution.

71. A third group of reports relates to the situation of families that remain divided because, even though family members residing in Cuba have entry visas for the countries to which they would like to travel, the authorities have denied them permission to leave in order to join other family members. In many of these cases, the refusal to permit wives and children to leave is reported to be in retaliation for the activities or political opinions of the head of the family, or for his having left the country illegally. The following are in this group: Ernesto Luque, who is not being allowed to leave the country to join his parents residing in the United States; Gladys Menéndez Fernández and Marlene Cardoso Menéndez, who were granted Canadian residence visas in 1990; Maribel Bárbara Govín and her young children Lexia Coro Govín and Ramiro Coro Govín, who have had entry visas to the United States since 1990; Divier Reimondo Velázquez, who was not allowed to travel to the United States with his parents in November 1989 and has still not been granted permission; Carlos Enrique and María Beatriz García González, who are of legal age and have visas to travel to Spain, where their parents have been living since July 1992; Ileana Pérez Quintana and her small children Daniel and Daría Camacho Pérez, who have had United States entry visas since 1990. In connection with some of these cases, it was reported that the denial of authorization to leave the country had been accompanied by reprisals, such as dismissal from employment.

72. Finally, the Special Rapporteur was informed that persons who have left the country legally for an indefinite period also need an entry permit in order to return, even temporarily. In this connection, too, the authorities are reported to act very arbitrarily.

VIII. CONDITIONS IN THE PRISONS

73. The Special Rapporteur received many case reports on conditions in the prisons which, in his opinion, are largely inconsistent with the Standard Minimum Rules for the Treatment of Prisoners 7/ and the Code of Conduct for Law Enforcement Officials 8/ and even with the provisions of the Cuban Penal Code itself regarding imprisonment (arts. 30 and 31). Many of these reports concern the shortage and poor quality of the food served to prisoners, which is unfit for human consumption. Spontaneous protests arising from this situation are often repressed through imprisonment in special punishment areas and brutal beatings.

74. The reports also repeatedly mention the alarming lack of medical care for prisoners, most of whom are ill from the food situation and unhygienic conditions. Many fatal cases of beri beri, for example, are reported to have occurred in such prisons as Canapeta, in Ciego de Avila; Agüica, in Matanzas; and Jovellanos, Combinado Sur, Matanzas. Many of the reports referred to the

situation of prisoners suffering from acquired immune deficiency syndrome (AIDS), with particular emphasis on a group of approximately 30 of them who are in the punishment area called "los candados" ("the locked up") in building No. 3 of the Combinado del Este prison. According to the information received, the care given to these prisoners is not much better than the meagre care provided by the prison staff; they have been denied the assistance of specialists.

75. Various sources supplied the Special Rapporteur with a list of prisoners who are serving sentences for political offences and are constantly denied medical care. Their illnesses were identified (diabetes, tuberculosis, duodenal ulcers, etc).

76. The sources mentioned several cases in which lack of medical care had led to death. For example, Rodolfo Gómez Ramos, 42 years old, died in March 1992 after being denied medical treatment at Micro 4 de Alamar prison in Havana, where he was serving a sentence for attempting to leave the country illegally. In view of his serious medical condition, caused by an ulcer, Mr. Gómez Ramos repeatedly asked to be moved to hospital. His requests went unheeded; instead, arrangements were made to transfer him to a stricter prison, Agüica, in the province of Matanzas. Apparently it was while he was being moved that he died. According to information received, a commission of inquiry was appointed after the death. The Special Rapporteur does not know what the Commission's findings were. It was also reported that on 1 February 1992, Francisco Díaz Mesa, 24 years old, died at Alambrada de Manacas prison, in Villa Clara. He was denied medical treatment after contracting pneumonia. According to information received, shortly before he died, he tried to get the attention of the guards; they gave him a severe beating, and he died shortly afterwards without receiving medical assistance.

77. Beatings are another recurrent theme in the reports. Far from being isolated incidents, they apparently are administered regularly by the prison authorities in order to punish or intimidate. Moreover, complaints of maltreatment addressed to the relevant authorities never seem to get anywhere. Among the cases mentioned was that of an inmate at Alambrada de Manacas prison, Bienvenido Martínez Bustamante, who was severely beaten on 8 June 1992, supposedly for criticizing the Revolution. It is reported that he had bruises all over his body, that his face was disfigured and that he had lost consciousness; nevertheless, he received no medical attention whatsoever. There was also the case of Ibelise Camejo Moleiro, who was brutally beaten on 4 May 1992 at Guanajay prison because he had written a letter to the authorities complaining about being in solitary confinement, having no water for personal hygiene and being denied correspondence. It is also reported that Brisuela Angulo, Héctor Romero Yanes and Alexis López Padrón, inmates at Combinado del Este prison, were beaten in late November 1992, after requesting medical assistance or demanding better treatment of prisoners, and that hunger strikes staged by some prisoners in protest against their living conditions are often repressed with beatings and confinement in punishment areas.

78. According to the reports, the situation with regard to scarcity of food and medicine, denial of medical care, unhealthy conditions and physical maltreatment is at its worst at provincial prisons such as Kilo 7 prison (Camagüey), Cinco y Medio prison (Pinar del Río), Agüica prison (Matanzas), Boniato prison (Santiago de Cuba) and Alambrada de Manacas prison (Villa Clara).

79. There were also reports about conditions at labour camps ("correccionales laborales"), particularly those at Motembo and Quesada. The inmates are forced to perform arduous agricultural work in an undernourished state and sometimes sick and barefoot. According to the reports, workers being punished for indiscipline in the workplace, for economic transgressions and for other similar offences are sent to such centres.

IX. CONCLUSIONS AND RECOMMENDATIONS

80. The Government of Cuba has so far refused to cooperate at all with the Special Rapporteur, but nevertheless the Special Rapporteur continues to hope that, in the not too distant future, there will be an opportunity to open a dialogue and to make working visits to Cuba.

81. The Cuban Government's position is based on the arguments set out below. Firstly, the Government questions the legality of the procedure whereby the Special Rapporteur was appointed. The Government's complaint was forwarded to the Office of Legal Affairs (see annex II), which issued a contrary opinion on 30 April 1992. Any doubt on the matter must therefore be considered as having been dispelled.

82. Secondly, the Government maintains that there are no human rights violations in Cuba, at least not on a scale comparable to the situations of mass violations existing in many countries being monitored by the Commission on Human Rights under agenda item 12. Accordingly, the Government maintains that the study of the human rights situation in Cuba in this context is unjustified and is entirely politically motivated.

83. In this connection, the Special Rapporteur wishes to make a number of observations. His mandate does indeed have a political origin, in that it derives from a resolution of the Commission on Human Rights, which is a politically constituted body. Regardless of this, however, it is the obligation of the Special Rapporteur, as of all rapporteurs and experts appointed by the Commission on Human Rights, to discharge his duties with impartiality, independence and objectivity, taking as points of reference the values embodied in international human rights instruments, particularly the Universal Declaration. While these instruments may also be said to have a political content, in that they are the result of a specific conception of the individual, society and the State, they have been universally recognized and now represent a minimum standard, regardless of the social or ideological situation prevailing in a given country.

84. In addition to the above observations, the Special Rapporteur wishes to point out that, under Article 56 of the Charter of the United Nations, States pledge to cooperate with the Organization for the achievement of the purposes set forth in Article 55, one of which (subparagraph (c)) is the promotion of universal respect for, and observance of, human rights and fundamental freedoms.

85. This report and its recommendations focus on such basic rights as freedom of opinion, assembly and association, as well as trade union freedom and religious freedom. It also describes the practices followed by the Government in regard to freedom of movement and draws attention to the situation of the prison population, particularly of persons serving sentences for offences with political connotations. The report does not mention the right to life because, at present, violations in this area, such as summary or arbitrary executions or enforced or involuntary disappearances, are not typical of the Cuban situation. Economic, social and cultural rights have also been omitted.

86. There can be no doubt that the Cuban political system and Cuban society have special characteristics and, as a result, so do the human rights situation and the systematic violations committed. However, this in no way justifies such violations or makes them acceptable. One of the characteristics mentioned in the report which deserves special consideration is the fact that dissidence within the society is expressed in an entirely peaceful manner, in an attempt to avoid any confrontation or violence.

87. In the light of the human rights situation in Cuba as described in this report, the Special Rapporteur, through the Commission on Human Rights, recommends that the Government of Cuba should adopt the following measures with a view to improving the observance of fundamental rights:

(a) Ratify the principal human rights instruments to which Cuba is not a party, in particular, the International Covenant on Civil and Political Rights and its Optional Protocols and the International Covenant on Economic, Social and Cultural Rights;

(b) Cease persecuting and punishing citizens for reasons relating to the freedom of peaceful expression and association;

(c) Permit legalization of independent groups, especially those seeking to carry out human rights or trade-union activities, and allow them to act within the law, but independently;

(d) Respect the guarantees of due process, in accordance with the provisions set forth in international instruments;

(e) Ensure greater transparency and guarantees in the prison system, so as to avoid incidents of excessive violence exercised against prisoners. In this connection, it would be a major achievement to renew the agreement with the International Committee of the Red Cross and to allow independent national groups access to prisons;

(f) Review sentences imposed for offences with political connotations and for trying to leave the country illegally;

(g) Expedite and make more transparent the procedure for applying for permission to leave and enter the country, while at the same time avoiding measures of retaliation against the applicants. Family reunification cases should be given priority attention. On this subject, the Special Rapporteur is aware of the need for persons wishing to travel to have visas for entry into other countries.

88. It would be desirable for Cuba's policy on travel abroad to be less strict and, for other countries, in their turn and as a counterpart, to relax the restrictions imposed on their own citizens regarding travel to and communication with Cuba. This, in addition to resolving difficulties from a strictly humanitarian aspect, would help to end the artificial and painful isolation in which the Cuban people live.

89. While not overlooking the urgent need for specific measures, as proposed above, the Special Rapporteur nevertheless wishes to point out that any analysis concerning the situation and implementation of human rights in Cuba must, as a point of departure, accept the fact that the Government is, and has for a long time been, surrounded by an international climate extremely hostile to many of its policies and, in some cases, even to its very existence. This hostile international climate does not seem to have been affected by the vast political, military and economic changes that have taken place in the world in the last few years. Similarly, the changes which have occurred in the previously socialist European countries, as also in the policies of many third world countries, seem to have so far had no impact on Cuba's internal policy. On the other hand, the abrupt breakdown in the flow of aid previously received from abroad, as well as the almost total exclusion of Cuba as a beneficiary of the multilateral financing and technical assistance agencies, have not given the Government much room for manoeuvre in this field. In the opinion of the Special Rapporteur, a policy vis à vis Cuba based on economic sanctions and other measures designed to isolate the island constitute, at the present stage, the surest way of prolonging an untenable internal situation, as the only remedy that would be left for not capitulating to external pressure would be to continue desperate efforts to stay anchored in the past. International sanctions, especially if accompanied by conditions implying the adoption of specific measures, be they political or economic, are totally counterproductive if it is the international community's intention to improve the human rights situation and, at the same time, to create conditions for a peaceful and gradual transition to a genuinely pluralist and civil society. Any suggestion along the lines that the future sovereignty of the Cuban people could be contingent on external powers or forces would, in the collective memory of the Cuban people, evoke traumatic experiences of their not-very-distant history and their fight for independence, and would be a very effective obstacle to the achievement of changes which could be very welcome in other circumstances.

90. Cuba is going through one of the most difficult periods in its recent history so far as the economic situation is concerned. The reasons for this are obvious and they need no elaboration in this report. The level of living has deteriorated to a point where basic services such as public transport have reached levels close to a standstill. Given this situation, the public reaction can be none other than disappointment and despair. On the other hand, the Government seems to be resorting to repressive measures to silence

any expression of discontent or independent opinion, however moderate it may be. The persecution of individuals is being carried on, sometimes even at trifling levels, and with a callousness which, in the eyes of an impartial observer, would seem patently out of proportion. The cases referred to in this report give a clear picture of this situation.

91. The Cuban nation, which, in adverse conditions, has managed to cast off much of the dead weight of underdevelopment and now has a literate and skilled population, could, by applying measures such as those proposed, take a step forward towards a productive and creative society in which human rights guarantees are respected in an environment of mutual confidence and social peace.

Notes

1/ Adopted by the Seventh United Congress on the Prevention of Crime and the Treatment of Offenders, and confirmed by the General Assembly in its resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985.

2/ Throughout this report, the names of groups and their posts are used as transmitted to the Special Rapporteur by non-governmental sources.

3/ Amnesty International, Cuba: Silencing the Voices of Dissent, December 1992, p. 23.

4/ Official warnings appear to be governed by article 75 of the Penal Code, which reads:

> "1. Any person who [...] through his links or relations with persons constituting a potential threat to society, to other persons and to the social, economic and political order of the socialist State, may have criminal tendencies shall be given a warning by the competent police authority against engaging in socially dangerous or criminal activities.
>
> 2. The warning shall, in every case, formally state the reasons why it was given and what the person warned has to say, and it shall be signed by this person and the official concerned".

5/ International Labour Office, 284th Report of the Committee on Freedom of Association, GB.254/6/8.

6/ International Labour Office, Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 4A), 1992, pp. 222-224.

7/ Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, and approved by the Economic and Social Council in its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.

8/ Adopted by the General Assembly in its resolution 34/169 of 17 December 1979.

Annex I

NOTE VERBALE DATED 27 APRIL 1992 FROM THE PERMANENT REPRESENTATIVE OF CUBA TO THE UNITED NATIONS ADDRESSED TO THE SECRETARY-GENERAL

The Permanent Representative of Cuba presents his compliments to the Secretary-General of the United Nations and has the honour to transmit to him the Cuban Government's legal interpretation of Commission on Human Rights resolution 1992/61.

Cuba, as its authorized representatives have stated, believes that this resolution is the illegitimate offspring of the efforts of the Untied States Government to interfere in Cuba's internal affairs, seeking new pretexts and complicities for continuing its aggressive policy against Cuba in the current changing conditions of the world, where old "cold war" justifications have no credibility any longer.

In that connection, Cuba has expressed its determination not to accept the illegal and discriminatory treatment that the United States Government is trying to impose on it and in which the latter is trying to involve the United Nations, so that as a result of this firm position it will not implement so much as a single comma of resolution 1992/61 imposed by the United States on the Commission on Human Rights.

This attitude is identical to that taken by Cuba with regard to Commission resolution 1991/68, and is an immutable position of principle, consistent with the Charter of the United Nations and international law.

At the same time, Cuba has declared and reiterates its willingness and desire to continue its cooperation with the United Nations in the field of human rights, as shown not only by the contribution it has always made to the work of the Commission, but also, in respect of our country in particular, by the attention that the Cuban Government devotes to replies under the procedure established under Economic and Social Council resolution 1503 (XLVIII) and to the thematic Rapporteurs, and to contacts with the Secretary-General of the United Nations.

Furthermore, and in addition to the foregoing, operative paragraph 6 of resolution 1992/61, which "Requests the Chairman of the Commission at its forty-eighth session to designate the Special Representative appointed by the Secretary-General pursuant to its resolution 1991/68 as its Special Rapporteur to review and report on the situation of human rights in Cuba", makes it very clear that this is a personal designation of Mr. Rafael Rivas Posada who served as Special Representative of the Secretary-General until the forty-eighth session of the Commission, at which he submitted the report for which he had received a mandate under Commission resolution 1991/68, approved by the Economic and Social Council in decision 1991/252.

The personal designation of Mr. Rafael Rivas Posada as Special Rapporteur is confirmed in operative paragraph 9 of Commission resolution 1992/61, which "Requests the Special Rapporteur to carry out his mandate, including the questions contained in his letter of 6 December 1991 (E/CN.4/1992/27, annex III and appendix), to the Cuban authorities, bearing in mind ...".

In other words, this paragraph refers to the letter sent by Mr. Rivas Posada when he was still serving as Special Representative of the Secretary-General.

It is clear, as regards designation of the Special Rapporteur, that there is no other possible interpretation of the text of resolution 1992/61, and this was recognized by Mr. Rivas Posada himself when, in his letter of 18 March 1992, he informed the Chairman of the Commission of his decision not to accept the appointment as Special Rapporteur on Cuba which, in accordance with resolution 1992/61, would go to him.

Since, pursuant to Commission resolution 1991/68 and Economic and Social Council decision 1991/252, Mr. Rivas Posada's post as Special Representative of the Secretary-General expired at the forty-eighth session of the Commission on Human Rights, and at that time the Commission did not recommend any mandate to continue that post, either in the person of Mr. Rivas Posada or in any other person, it is patently clear that at present there is no legal basis for appointing a new Special Representative of the Secretary-General, and no legal basis for designing any person other than Mr. Rivas Posada as Special Rapporteur.

In the light of the foregoing, it is the legal opinion of Cuba that Commission resolution 1992/61 is in all points inapplicable because Mr. Rivas Posada declined the appointment offered to him therein.

These legal and procedural reasons, along with substantive and political reasons, lead Cuba to reject, with the utmost firmness and determination, the manoeuvres carried out against it by the United States Government which, with unparalleled hypocrisy, used the pretext of human rights and attempted to make the United Nations an accomplice in its methods. Given this situation, my country's energy and determination will not be lacking at any time.

Annex II

OPINION ISSUED BY THE OFFICE OF LEGAL AFFAIRS ON THE INTERPRETATION OF PARAGRAPH 6 OF COMMISSION ON HUMAN RIGHTS RESOLUTION 1992/61

...

8. In order to clarify the legal situation thus created, recourse must be had to the terms of resolution 1992/61 in their context and in the light of their object and purpose. While the resolution does not address directly the question of a possible substitution for Mr. Rivas Posada, not only the above-quoted passage, but other provisions of that resolution are relevant in ascertaining the Commission's intentions in adopting the resolution. By paragraph 7, the Commission requested the Special Rapporteur "... to maintain direct contact with the Government and citizens of Cuba, in accordance with resolution 1991/68 and decision 1989/113, concerning the issues and questions contained in and associated with the report of the mission to Cuba as well as the report of the Special Representative". By paragraph 8, the Government of Cuba was urged to cooperate with the Special Rapporteur. Finally, by paragraph 9, the Special Rapporteur was requested to carry out his mandate and to report to the Commission on the results of his endeavours pursuant to the resolution at its forty-ninth session and to submit an interim report to the General-Assembly at its forty-seventh session.

9. The intention of the Commission, therefore, is that the mandate conferred originally on the Secretary-General's Special Representative would be continued by a new Special Rapporteur appointed by the Secretary-General as Special Representative and designated by the Chairman as Special Rapporteur. The Commission decided that the Chairman should, for that purpose, designate the Secretary-General's Special Representative as the Commission's own Special Rapporteur. The operative provisions of the resolution make it clear that the original mandate is to be continued and that reports on the efforts made to carry out that mandate are to be submitted both to the next session of the Commission on Human Rights and the General Assembly.

10. Nothing in the resolution indicates that its object and purpose is limited to Mr. Rivas Posada. It does not refer to him by name. No provision of any of the relevant Commission decisions of which we are aware refers by name to the individual who had been designated "Special Representative". It is the usual practice in the United Nations to consider "Special Representatives" or "Special Rapporteurs" as organs of the body establishing them, in this case the Commission on Human Rights. Absent a different intention expressed by the body establishing the post, the resignation or death of the person holding the post does not, in and of itself, end the mandate. Rather, a new appointment is normally made so that work can continue in fulfilment of the particular mandate, usually in the same manner as prescribed for the initial appointment.

11. To hold in this case that the mandate ended with the resignation of the Special Representative would result in thwarting the Commission's clearly stated intention that the mandate be continued and that reports be submitted

on the endeavours made to carry it out. There is no language to support the contention that the mandate was only to be carried out by a particular person.

12. Moreover, the Commission's practice supports the Chairman's position that a replacement should be sought. For example, in 1985, the Commission's Special Rapporteur on the situation of human rights in Chile resigned. The Chairman appointed a successor "following consultations with the members of the Bureau of the Commission and in accordance with established practices" (E/CN.4/1985/41, para. 5).

13. Finally, nothing in resolution 1992/61 indicates that the Commission meant to imply that the designation of a Special Rapporteur would entail that, in future cases, the nomination of a Special Rapporteur would have to be done, not by the Secretary-General, but by reverting to the usual practice. On the contrary, the resolution refers explicitly to the fact that "the Special Representative appointed by the Secretary-General" is designated Special Rapporteur.

14. We agree, therefore, with the Chairman's intention to invite the Secretary-General to designate a new Special Representative and find it to be a logical and correct interpretation of Commission resolution 1992/61. As envisaged by the Chairman, in this case the Secretary-General should be invited to appoint a new Special Representative. Such an appointment should be made in accordance with the procedure set out for the appointment of the initial Special Representative in Commission resolution 1991/68, i.e. "after consultation with the Chairman and the Bureau of the Commission".

15. Once appointed by the Secretary-General, the Special Representative would then, as indicated by the Chairman, be designated the Commission's Special Rapporteur pursuant to its resolution 1992/61.

Annex III

LIST OF 51 PERSONS ASSOCIATED WITH HUMAN RIGHTS ORGANIZATIONS OR OF SO-CALLED POLITICAL DISSIDENTS WHO, ACCORDING TO THE ORGANIZATION "AMERICAS WATCH", WERE IN PRISON IN JANUARY 1993

Marco Antonio Abad Flamand
Gabriel Aguado Chávez
Pedro Alvarez Martínez
María Elena Aparicio
Sebastián Arcos Bergnes
Carmen Arias Iglesias
Daniel Azpillaga Lombard
Miguel A. Ballester Cintas
Reinaldo Betancourt Alvarez
Amador Blanco Hernández
Rigoberto Carcelles
Jesús Contreras Milán
Jorge Crespo Díaz
Aníbal Cruz Martínez
María Elena Cruz Varela
Bienvenida Cúcalo Santana
Joel Dueñas Martínez
Adolfo Durán
Aurea Feria Cao
Agustin Figueredo Figueredo
Rodolfo González González
Adriano González Marichal
Juan Graverán Piloto
Paster Herrera Macurán
Rubén Hoyos Ruíz
Víctor Reinaldo Infante
Wilfredo Llanes Márquez
Alexis Maestre Saborit
Luis Enrique Martínez Martínez
Hubert Luis Matos Sánchez
Santiago Medina Corzo
Juan Mayo Méndez
Juan José Moreno
Ramón Obregón Sarduy
Rolando Pagés Navarro
Luis Alberto Pita Santos
Jorge Pomar Montalvo
Omar del Pozo
José Luis Pujol
Yndamiro Restano
Luis Reyes
Julián Jorge Reyes
Pablo Reyes Martínez
Félix Rodríguez Ramírez
Amado Rodríguez Rodríguez
Manuel Sánchez Herrero
Miguel Sordo Quintanilla
Jorge Vázquez
Fernando Velázquez Medina
Eduardo Vidal
Fidel Vila Linares

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Forty-ninth session
agenda item 12

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Situation of human rights in Romania

Report by the Secretary-General submitted pursuant to resolution 1992/64 of the Commission on human rights

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INTRODUCTION

1. At its forty-eighth session, on 3 March 1992, the Commission on Human Rights adopted resolution 1992/64 entitled "Situation of Human Rights in Romania", the operative part of which reads as follows:

"The Commission on Human Rights,

...

1. Takes note with appreciation of the report of the Special Rapporteur (E/CN.4/1992/28);

2. Expresses its gratitude to the Special Rapporteur for the report and for the manner in which he has discharged his mandate;

3. Welcomes the steps taken to establish in Romania a democratic and pluralist system of government based on respect for human rights and the rule of law;

4. Takes note of the fact that respect for human rights in general continues to improve in Romania, although considerable shortcomings remain to be overcome, as pointed out in the report of the Special Rapporteur, inter alia, as regards the practical application of the new constitutional and legislative rules (para. 139), the independent and impartial functioning of the justice system (paras. 143 and 144) and the minority problem (paras. 153-160);

5. Urges the Government and authorities of Romania to continue their efforts to ensure respect for human rights in all their aspects in the country, both de jure and de facto, in particular by paying attention to the observations made by the Special Rapporteur and by implementing his recommendations;

6. Takes note with appreciation of the positive attitude of the Government of Romania and its declared readiness to continue to cooperate with the Commission on Human Rights;

7. Welcomes the close cooperation between the Government and authorities of Romania and the Centre for Human Rights in the field of advisory services;

8. Welcomes also the conclusion, on 23 September 1991, of an agreement between the Centre for Human Rights and the United Nations Fund for Advisory Services and Technical Assistance in the Field of Human Rights, on the one hand, and the Government of Romania, on the other, providing for publications, training, education, seminars, workshops, fellowships, advisory services of experts and support for national institutions to be given for a period of two to three years commencing 1 October 1991;

9. Requests the Secretary-General:

(a) To bring the present resolution to the attention of the Government of Romania and to invite it to provide information regarding its implementation;

(b) To report to the Commission at its forty-ninth session on the implementation of the present resolution, particularly on the measures referred to in paragraph 4, taking into account also information provided by intergovernmental as well as non-governmental organizations;

10. Decides to continue its consideration of the question in the light of the report of the Secretary-General to the Commission at its forty-ninth session."

2. Pursuant to paragraph 9 (a) of this resolution, the Secretary-General sent to the Minister for Foreign Affairs of Romania on 6 November 1992 a note verbale inviting the Government to provide all the necessary information concerning the implementation of the above-mentioned resolution.

3. Pursuant to paragraph 9 (b) of resolution 1992/64, an international organization and several non-governmental organizations provided information which is reflected in summarized form in annexes II, III and IV to this report.

I. REPLY OF THE PERMANENT REPRESENTATIVE OF ROMANIA TO THE UNITED NATIONS OFFICE AT GENEVA

4. In reply to the note verbale of the Secretary-General, the Permanent Representative of Romania to the United Nations Office at Geneva sent to the Centre for Human Rights a note verbale dated 5 January 1993 transmitting a document concerning measures taken to guarantee and promote the implementation of human rights in Romania during the year 1992. This document reads as follows:

"Information submitted by the Government of Romania pursuant to Commission on Human Rights resolution 1992/64 of 3 March 1992

1. During 1992, Romania continued its progress towards democracy and the rule of law, based on respect for human rights and political pluralism.

Fundamental changes have taken place in Romanian society, involving all the legislation and the organization of the State, as well as transition towards a market economy.

While more rapid advances have been made in certain areas, progress will take time because of the difficulties of the transition to a market economy, the requirement to train new cadres and the particular problems of the process of education and modification of attitudes.

The decision taken is irreversible, however, and the path we are to follow has been marked out. Another feature of the year 1992 was the development of Romania's participation in international cooperation in the field of human rights.

2. Within a short period of under three years, Romania has adopted a Constitution, 237 new laws and many decree-laws, a legislative effort that is clear evidence of change and of the determination to build in Romania a new State based on the rule of law.

With regard to the texts of the principal laws and Government decisions adopted since September 1991 that contain provisions in the area of human rights, a list is attached that brings up to date the list annexed to the report on the situation of human rights in Romania submitted to the Commission at its forty-eighth session (E/CN.4/1992/28, annex II) [see annex I to this report].

3. The local and general elections held in 1992 marked an important stage in Romania's democratic development.

The local elections held in February 1992 to fill town hall offices and seats on communal and town councils were the first free elections of this kind held in Romania since the Second World War. They took place generally without incident and resulted in the election of 2,918 mayors, of whom 2,699 were of Romanian origin and 217 were members of national minorities (184 Hungarians, 11 Germans, 9 Ukrainians, 8 Serbs, 3 Czechs/Slovaks, 2 Bulgarians and 2 from other minorities). A large number of mayors and councillors, particularly in the large towns, including Bucharest, were nominated as candidates by the Democratic Convention, a coalition of opposition parties.

The presidential and parliamentary elections were held without incident in September and October 1992. They were witnessed by 562 foreign observers, from 35 countries, and 7,572 Romanian observers. The observers found that the elections had taken place in a free and fair manner.

Certain technical and administrative deficiencies in the organization of the elections did not in any way influence the results, which were challenged only in respect of some minor matters. For example, the large number of spoiled ballots (approximately 10 per cent of the electorate) was due to the similarity of the electoral symbols of certain parties and to confusion as to how to vote, e.g. in the case of the Democratic Convention and its component parties and the parties formed by members of the Gypsy ethnic group. As a result of this, many electors voted for several political formations, thus rendering their ballots invalid.

Similarly, the large number of persons entered on special lists (more than 10 per cent of the electorate) was due to inadequacies in the population data for several urban districts, to the recording of members of the armed forces, school-children, students and hospital patients on

special lists and to the movement of electors from towns into rural areas at weekends, and could not affect the votes of the persons concerned.

Furthermore, the results are much more balanced than those of the 1990 elections, since no party obtained an absolute majority in the Parliament (the largest number of votes was obtained by a party representing approximately 35 per cent of the Parliament).

4. Following the adoption of the new Constitution, the reform of the administration of justice in Romania is an important factor in the democratic organization of the country. New legislation adopted has included Act No. 92/1992 on the organization of justice; Act No. 47/1992 on the organization and functioning of the Constitutional Court; Act No. 94/1992 on the organization and functioning of the Court of Audit; and Act No. 104/1992 amending and supplementing the Criminal Code, the Code of Criminal Procedure and other legislation.

(a) The Constitutional Court, composed of nine independent and irremovable judges elected for a nine-year term, has the following main functions: deciding on the constitutionality of laws, before their promulgation, and on the constitutionality of regulations adopted by the Parliament; ruling on challenges of the constitutionality of laws and ordinances, presented in the courts by any party to proceedings or by a court itself; ruling on any challenges of the constitutionality of a political party by the President of one of the chambers of Parliament, (following a vote in that chamber) or by the Government; and supervising election and referendum procedures.

The Constitutional Court has already begun its work and has handed down several major rulings. These include the Court's decision declaring unconstitutional a law adopted by the Parliament which was designed to suspend proceedings for recovery of property improperly acquired by the State, as well as the execution of judgements on this subject. The basic reason for the Court's decision was that this law was prejudicial to the independence of the judiciary and to the separation of powers within the State.

(b) The new organization of justice, based on the principle of the separation of powers, provides for a new judicial system composed of four levels, namely: 179 courts of first instance (as compared with 98 at present); 41 departmental courts; 15 appeal courts for regions comprising two or three departments; and a new judicial level, re-established after 44 years in order to have a third level of jurisdiction, the Supreme Court of Justice.

With regard to the military courts, under a bill submitted to Parliament, there will be four courts of first instance, a territorial military court and a military court of appeal. Under Act No. 104 of 1 October 1992, the competence of the military courts was considerably reduced by the elimination from their purview of offences committed against the State by civilians, offences against peace and humanity and offences against the State committed by judges, civilian procurators and State notaries. In addition to offences committed by military personnel,

the military courts will be competent to judge, only offences committed in the performance of their duties by civilian personnel of military units and offences committed by civilians against the property of military units.

(c) The former "Procuratura" will be organized as a government procurator's office. The procurators will be organized in parquets attached to the different courts and functioning under the authority of the Minister of Justice.

(d) The Supreme Council of Justice which has been established will have as its primary functions to make recommendations to the President of Romania for the nomination of judges and government procurators and to decide on the promotion, transfer, suspension and removal of judges, acting as a disciplinary council for the judiciary.

(e) The Court of Audit, reinstituted after a period of 45 years, will be the supreme body conducting financial controls and exercising jurisdiction in financial matters. It will be attached to the Parliament.

Audit chambers will function in each of the 41 departments of Romania.

5. As regards the administration of prisons, since 17 January 1991, following the transfer of this function to the Ministry of Justice, major changes have been made that are designed to ensure respect for the rights of prisoners:

- Several internal orders and regulations, which contained rules characteristic of the Communist regime, have been reviewed and abolished;

- Free access to prisons, allowing visits by the lawyers and relatives of prisoners, as well as by representatives of the mass media seeking information, has now become a reality, whereas in the past prisons seemed almost like closed fortresses;

- The training and education programme for prison personnel has been completely modified in the spirit of the requirements dictated by the principles of justice and respect for human rights;

- New draft legislation on the execution of penalties and new prison regulations have been drawn up and will be submitted to the Parliament;

- A sustained financial effort is being made to improve the material conditions of the prison system.

The former regime having left an extremely heavy burden (13 of the 40 departments of Romania lack a prison), achievement of the desired progress will take some time.

6. The general and local elections have led to quite substantial changes in the machinery of the State and the fundamental aim has been to achieve greater professionalism and competence. The mayors and councillors of communes and towns are elected, whereas the departmental councils are set up on the basis of the town and commune councils. Only the prefects and deputy prefects are appointed by the Government.

In the field of justice, radical changes have been made at the top level of the Ministry, in the Supreme Court of Justice and in the ordinary courts. Persons compromised by their activities during the Communist regime have been removed either by transfer or by compulsory retirement. The posts which have thus become vacant have been filled by competitive examination and this has led to the promotion of many well-qualified young judges.

The reform of the judicial system, as well as the changes in the economy, have increased the requirement for able judges, jurists and lawyers.

During the years of the dictatorship, the three faculties of law (at Bucharest, Cluj-Napoca and Lasi) together produced some 200 to 250 graduates annually, which was insufficient to meet the need.

Since the revolution of December 1989, the number of faculties of law organized by the State has doubled and the number of students has increased substantially. In the private universities, there are now some 10 faculties of law. The students in the new faculties are now in their third year of studies. By 1994, therefore, an adequate number of lawyers will be available.

7. On the question of the minorities, the Romanian authorities have devoted particular attention to the comments and observations of the Special Rapporteur (E/CN.4/1992/28, paras. 153-160). From the human rights standpoint, the situation of the Hungarian minority continued to improve in 1992. The general elections of September 1992 maintained the level of representation of the Hungarian minority in the Romanian Parliament (39 deputies and senators), following elections in which the Democratic Union of Hungarians of Romania participated within the framework of the Romanian Democratic Convention, together with other parties and political bodies.

Each of the other national minorities is represented by a deputy, in accordance with the electoral law, since they won no seats in the elections.

The local elections held in February 1992, in which the Democratic Union of Hungarians of Romania participated as a member of the Democratic Convention, resulted in the election of 184 mayors and 2,950 councillors in towns and communes having a population of Hungarian ethnic origin. In the department of Covasna, for example, 31 mayors of Hungarian origin and 7 mayors of Romanian origin were elected; in the Department of Satu-Mare 40 mayors of Romanian origin, 18 of Hungarian origin and 2 of German origin were elected; in the department of Mures 64 mayors of Romanian

origin and 33 mayors of Hungarian origin, 785 councillors of Romanian origin, 478 councillors of Hungarian origin, 5 councillors of German origin and 29 councillors of Gypsy origin were elected.

8. The situation with regard to teaching in the mother tongues of minorities in Romania is described in attachment No.2 to the present note [see annex I to this report]. Proportionally, it is comparable to the situation in other European countries.

Depending on the way the local school system is organized, the parents of pupils are entitled to choose for their children's education either their mother tongue or Romanian. The system is therefore an open one which depends on the situation that prevails at the start of each school year and, depending on the requests made, there may be a greater or smaller number of schools and classes teaching in the mother tongues. Whenever 15 parents opt for the teaching of their children in their mother tongue, a class is formed for these children, even if there is no school using that language in the locality concerned.

In addition, in some remote localities, at the request of the parents groups of seven pupils may study in their mother tongue.

Admittedly, the situation is not ideal, since in some areas the number of pupils or classes will exceed the established limits because of a lack of accommodation or of teachers. It will take some time to remedy this situation, which affects the entire school population of Romania and not any particular minority.

Another matter of concern to the Romanian authorities, in those areas where the majority of the population is of Hungarian origin, is the situation of pupils of Romanian origin who often have no school or class using their mother tongue and for whom the number of teachers of Romanian is inadequate.

As regards university studies in the students' mother tongue, people belonging to the Hungarian minority may study in their mother tongue at the Tîrgu-Mures Theatre Institute (all subjects), at the Tîrgu-Mures Institute of Medicine and Pharmacology (over 60 subjects) in some departments and units at the University of Bucharest (philology) and especially at the University of Cluj-Napoca.

For the academic year 1992-1993, the University of Cluj-Napoca has an enrolment of 1,799 students of Hungarian origin. Of these, 869 are doing their studies in Hungarian. There are 3 departments, 52 units and 15 sub-units in which 179 subjects are taught in Hungarian.

A private university named "Bolyai" has just been established in Cluj-Napoca. An education bill is at present being considered and if this institution meets the statutory requirements it will be recognized as a university.

The Romanian State therefore provides university education in the mother tongues of the minorities, within the framework of efforts to maintain and develop the national identity of persons belonging to minorities.

9. The situation with regard to radio and television broadcasts in the various mother tongues is as follows:

Bucharest radio has daily broadcasts in Hungarian and in German;

The local radio stations at Cluj-Napoca, Tîrgu-Mures and Timisoara have daily programmes in Hungarian; the stations at Tîrgu-Mures, Timisoara and Constanta also have daily broadcasts in German; the Timisoara station also broadcasts in Serbo-Croat, Bulgarian, Czech and Slovak, and the Constanta station in Greek, Turkish, Lipovan, Tartar, Armenian and Romanian;

Bucharest television presents broadcasts twice weekly in Hungarian (90 minutes); once a week there is a programme in German (60 minutes); and four times a week there is a programme called "Together", which is designed for other minorities;

The Cluj-Napoca regional television station presents three programmes in Hungarian and one in German every week;

Private television stations in Timisoara, Arad, Brasov and Oradea also provide weekly programmes in Hungarian;

The Timisoara, Arad and Brasov stations also have programmes in German, while the Timisoara station has programmes in Serbo-Croat.

10. The minorities are well represented in public bodies, particularly in the regions where they are more numerous. For example, following the local elections in February 1992 the department of Harghita (with a population that is 84.6 per cent of Hungarian origin, 14 per cent of Romanian origin and 1.2 per cent of Gypsy origin) has 48 mayors of Hungarian origin and 10 of Romanian origin, 677 councillors of Hungarian origin and 102 of Romanian origin, and 50 deputy mayors of Hungarian origin and 7 of Romanian origin. The President of the departmental council is of Hungarian origin, as are most of the prefecture officials.

Following the same elections, the district of Bihor (with a population that is 66.1 per cent of Romanian origin, 28.5 per cent of Hungarian origin, 3.6 per cent of Gypsy origin and 1.4 per cent of Slovak origin) has 77 mayors of Romanian origin, 16 of Hungarian origin and one of Slovak origin, 1,022 councillors of Romanian origin, 252 of Hungarian origin, one of Gypsy origin and 20 of Slovak origin, as well as 74 deputy mayors of Romanian origin and 12 of Hungarian origin. The prefect is Romanian and the deputy prefect is Hungarian. There are 84 secretaries of mayor's offices who are of Romanian origin and 11 of Hungarian origin.

In the towns and communes, local autonomy is exercised by the local councils and the elected mayors. Consequently, in those localities where the population of Hungarian origin forms the majority, councils and mayors of Hungarian origin are responsible for the conduct of local affairs.

In this connection, attention is drawn to the Local Public Administration Act (No. 69 of 20 November 1991) which provides that public administration in the regional administrative units is based on the principles of local autonomy, decentralization of public services, eligibility of the local government authorities and consultation of the citizens on local issues of special interest. The functions of the local councils - which are elected - include: approval of economic and social development studies, forecasts and programmes; approval of the local budget, as well as its preparation, operation and execution; the establishment of taxes and local charges; the administration of public and private property in the locality; the establishment of local economic bodies and the functioning of local services, transport, utilities, etc.

11. It is true that there is still a climate of distrust between the Hungarian and Romanian communities in certain parts of the country. This seems to be mainly due to views and conceptions of "ethnic autonomy or self-determination" that are based on the desire for separate development of the Hungarian minority, are quite unrelated to the principles and norms of international law and are seen as imperilling the integrity and territorial unity of the country. The experience of history and the situation in certain neighbouring countries only add to the distrust of the organizations and persons upholding these views, particularly when they appear to be inspired by other States or foreign organizations.

Unfortunately, there still exist in Romania, and also abroad, certain publications in Hungarian, as well as in Romanian, which cultivate this distrust rather than understanding and tolerance.

During 1992, the Romanian authorities adopted a firmer attitude towards manifestations of chauvinism and anti-semitism, which they denounced, together with the extremist language used in certain publications. The Government of Romania reaffirmed in its statement of 25 March 1992 its determination strictly to observe the obligations it has assumed under the conventions and other international instruments to which Romania is a party and whose object is to prevent, combat and punish discrimination based on race, colour, national origin or religion. The text of this statement is to be found in attachment No. 3 (see annex 1 to this report).

12. The new Constitution of Romania provides in article 6 that "The State recognizes and guarantees the right of persons belonging to the national minorities to preserve, develop and express their ethnic, cultural, linguistic and religious identity".

The Constitution also states that "the measures of protection taken by the State for the preservation, development and expression of the

identity of persons belonging to the national minorities must be consistent with the principles of equality and non-discrimination vis-à-vis other Romanian citizens".

It is true that the Romanian State, the majority of whose population (90 per cent) is Romanian, like other unitary States, has a single national language. In the areas inhabited by persons of whom a significant majority belong to minorities, the local administration includes public officials who are of these minorities. Everyone is entitled to communicate with the local government, authorities and services in his mother tongue and to submit oral or written complaints in that language. He must receive a reply to any such communication and he may institute administrative proceedings in respect of any act by an executive organ which he considers prejudicial to him.

Judicial proceedings are conducted in Romanian, but everyone may have an interpreter, the latter being provided at State expense in criminal proceedings. This is for reasons related to the three-level judicial system comprising the local courts, the district courts, the appeal court and, of course, the Supreme Court of Justice. Since remedies must be available to all, at all levels of justice, it is necessary to use a single language so as to ensure that the remedies are available throughout the entire legal system, that the time limits specified in the procedural rules are observed and that decisions are taken on the basis of full information. This is also a question related to the unity of the judicial process and, of course, the country's financial capacity.

13. The situation and needs of the Gypsy community are now better understood. It is true that certain members of this community are experiencing difficulty in integrating into Romanian society, particularly during the present period of transition to a market economy. The Gypsy authorities and associations have nevertheless initiated a dialogue, particularly at the local level, in order to find solutions to the various problems. Measures have been taken to rebuild houses destroyed in local conflicts in certain areas (Kogalniceanu-Constanta). The first steps have also been taken to provide education for the children of this community, using teachers from within the community who are trained in units of existing teacher-training establishments.

A special programme has just been launched by the French Association of Human Rights Consultants, with the assistance of the French Ministry for Humanitarian Action, to implement the project for the social reintegration of the Gypsy community in Romania. This programme comprises educational, social and health aspects and is being carried out with the participation of Gypsy organizations, specialized international non-governmental organizations and local authorities. A pilot project in the field of education was carried out in July-August 1992.

14. The situation with regard to relations between the national majority and the minorities has, on the whole, become much more calm.

The best proof of this is the orderly and peaceful conduct of the local and general elections, the active participation of the minorities and the results the latter have achieved in the areas where they dwell.

The strengthening of democracy and the transition to a market economy are expected to offer conditions that are more likely to alleviate tensions and eliminate animosity.

The Romanian authorities and the non-governmental organizations have already initiated a dialogue, particularly at the local level, on all the questions of concern to the various circles among the populations of various ethnic origins in Romania: historians, journalists, teachers, writers, etc.

The international assistance in the field of human rights from which Romania has continued to benefit has expanded. The year 1992 was the first year of implementation of the United Nations programme of advisory services and technical assistance in the field of human rights for Romania, which was the subject of an agreement concluded with the United Nations Centre for Human Rights on 23 September 1991.

The Romanian authorities and non-governmental organizations have continued their participation in the Council of Europe's Démos and Démo-droit programmes.

A number of programmes, including lectures and seminars, scholarships, exchanges of experience, provision of documentation and improvement of the information and documentation infrastructure are currently being carried out in cooperation with such countries as France, the United States of America, Germany, the United Kingdom, Sweden, Italy, Denmark and Canada.

15. A number of communications concerning the situation in Romania have been sent to the United Nations Centre for Human Rights by Romanian citizens and by non-governmental organizations.

The replies furnished by the Romanian authorities will be found below."

5. Documents 1, 2, 3 and 4 attached to the reply of the Romanian Government are reproduced in annex I to this report.

6. The Romanian Government has also sent to the Centre for Human Rights a copy of the correspondence it transmitted on 6 January 1993 concerning two cases referred to it in accordance with the procedure laid down in Economic and Social Council resolution 728F (XXVIII). Because of the confidential nature of this procedure, the content of these replies is not reproduced in the present report.

II. OTHER RELEVANT INFORMATION

A. Advisory services and technical assistance

7. The Commission on Human Rights, in its resolution 1992/64 of 3 March 1992, welcomed the close cooperation between the Government and authorities of Romania and the Centre for Human Rights in the field of advisory services, and also welcomed the conclusion, on 23 September 1991, of an agreement between the Centre and the Government providing for publications, training, education, seminars, workshops, fellowships, advisory services of experts and support for national institutions over a two-to-three-year period commencing 1 October 1991. That agreement had been drafted on the basis of an expert mission to the country in 1991 and, subsequently, detailed plans for its implementation were developed and, as necessary, modified to take into account changing conditions and needs.

8. During 1992, the Centre continued the implementation of the long-term country programme of advisory services and technical assistance which was agreed between the Centre and the Government of Romania in September of 1991. Previous activities in this regard have included the advisory services of experts in the legal and technical aspects of democratic elections in April and May of 1990; technical assistance in the drafting of the Romanian Constitution, in the form of a seminar on human rights in constitutional law held in Geneva in December of 1990 and a mission of experts to Bucharest in February 1991. Also in 1991, the Centre organized a seminar on international human rights standards for the judges of the Romanian Supreme Court and the Presidents of the district courts of appeals, as well as a one-day briefing on the United Nations and human rights for Romanian non-governmental organizations. The activities within the context of the country programme in 1992 are listed below.

9. In April and May 1992, at the request of the Government of Romania, a mission composed of a Swiss electoral expert and two staff members of the Centre responsible for electoral assistance visited Bucharest. The mission sought to provide expert advice with regard to the legal, technical and human rights aspects of local, parliamentary and presidential elections scheduled for 1992. The team met with representatives of the Government, the various political parties, minority groups, and the administrative bodies charged with the conduct of elections. Working sessions were held with members of the judiciary and with persons responsible for the drafting of electoral laws.

10. During these meetings the team consulted with the parties involved regarding a number of problems identified in the electoral laws and procedures. Specific preliminary recommendations were made by the team, drawn from international standards and the comparative practice of a number of other democratic jurisdictions and based upon the Centre's review of certain difficulties identified in connection with previous elections in Romania. A comparative table was prepared showing the difficulties encountered during previous elections, possible solutions, and texts from other jurisdictions upon which solutions might be based. While in Bucharest, the team offered suggestions for overcoming difficulties and a detailed analytical report was subsequently drafted to provide further assistance for the elections.

11. During the national elections themselves, in October 1992, a staff member of the Centre for Human Rights with expertise in the area of elections took part in an electoral observation mission of United Nations officials organized by the Secretary-General at the request of the Government.

12. Throughout the year, the Centre continued to provide financial, organizational and documentary support to the Romanian Institute for Human Rights, which was established as an independent national institution for the promotion of human rights by the Romanian Parliament in 1991. The Centre assisted the Institute in its education, training, research and documentation mandates.

13. A training course on "Human Rights in the Administration of Criminal Justice" was held in Bucharest from 19 to 23 October 1992. The course was attended by some 70 Romanian police, prison and military officials, drawn from various duty stations around the country. A panel of international experts, assembled both for their familiarity with international human rights standards and their practical experience in the field of law enforcement, led discussions with participants on a variety of relevant topics. A participatory working group model of instruction was utilized to ensure the active involvement of the participants.

14. Topics covered in the course included the sources, systems and standards for international human rights in the administration of criminal justice; the duties and guiding principles of ethical police conduct; the use of force in law enforcement; the crime of torture; effective methods of legal and ethical interviewing; human rights during arrest and interviewing; the legal status and rights of the accused; standards for search and seizure; pre-trial detention and the role of police; the administration of justice in situations of internal conflict, states of emergency and civil disorder; legal crowd-control measures; minimum standards for facilities for prisoners and detainees; prison health issues, including AIDS and the HIV virus; special categories of prisoners and detainees, including juveniles, women and remand prisoners; prison administration, discipline, punishment and recourse procedures; juvenile offenders and the police, prison and military officials; crowd control and the use of force; the rights of women in the administration of justice; protection and redress for victims; community policing and non-custodial measures; protection of refugees in criminal justice; non-discrimination and minority relations; investigating violations; effective human rights training; the establishment and administration of democratic policing.

15. From 30 November to 4 December 1992, the Centre held a seminar on human rights in the administration of justice for 40 Romanian judges, lawyers and procurators in Bucharest. Participants from around the country took part in discussions and working sessions led by a panel of international and domestic experts on a range of subjects related to the human rights implications of the daily work of legal professionals. Topics covered included international sources, systems and standards for human rights; the independence of judges and lawyers; human rights in criminal investigations; the rights of the accused during arrest and detention; the elements of a fair trial; standards

for the protection of prisoners; non-custodial measures; the administration of juvenile justice; equality and non-discrimination in the justice system; and the rights of women in the administration of justice.

16. During the week of 7 to 11 December 1992, a training course on the teaching of human rights for Romanian primary school teachers was held at the Romanian Institute for Human Rights in Bucharest. Carefully selected participants from each of the country's 41 districts benefited from a full week of intensive working sessions designed to prepare them to return to their respective classrooms and introduce human rights into daily classroom activities.

17. A training course for Romanian teachers at the secondary school level was conducted in Bucharest from 14 to 18 December 1992. This course was specially targeted to the needs of secondary school instructors in the teaching of human rights. In preparation for these training courses, the Centre for Human Rights sponsored the participation of Romanian school teachers in the annual teacher training programme of the World Association for the School as an Instrument of Peace.

18. The Centre also aided the Romanian authorities throughout the year in the provision of comparative legal texts sought by the Government to assist them in the process of legislative development. In this regard, the Centre collected the organic laws of a number of democratic jurisdictions relating to the establishment and functioning of the Defender of the People, political parties, the Superior Council of the Judiciary and the Public Ministry, and forwarded them to the Government.

19. Finally, the Centre participated in the UNDP Round Table on Change, Systems and People, held in Bucharest from 4 to 6 September 1992. The Chief of the Advisory Services and Technical Assistance Branch delivered a presentation entitled "Transition process: respect for human rights and ethnic and religious diversity in a pluralistic system", at that event.

B. Activities of the rapporteurs of the Commission on Human Rights

20. In the report submitted by the Special Rapporteur on religious intolerance at the forty-ninth session of the Commission on Human Rights (E/CN.4/1993/62), paragraph 50 refers to the communication dated 18 September 1992 which the Special Rapporteur sent to the Romanian Government in connection with problems concerning the Uniate Church.

Annex I

DOCUMENTS ANNEXED TO THE REPLY OF THE PERMANENT REPRESENTATIVE OF ROMANIA TO THE UNITED NATIONS OFFICE AT GENEVA

Attachment No. 1
(see para. 4 of the report)

Most important legislation having human rights implications, adopted during the period September 1991-December 1992

1. Act No. 59 of 16 September 1991 amending and supplementing Decree-Law No. 118 of 30 March 1990 concerning the granting of certain rights to persons persecuted for political reasons by the dictatorship established on 6 March 1945.

2. Organization and Conduct of Public Meetings Act (No. 60) of 23 September 1991.

3. Act No. 61 of 27 September 1991 relating to the punishment of acts contrary to accepted social standards and to public peace and order.

4. Local Public Administration Act (No. 69) of 26 November 1991.

5. Local Elections Act (No. 70) of 26 November 1991.

6. Act No. 72 of 14 December 1991 amending and supplementing Act No. 1/1991 relating to the social welfare of unemployed persons and their vocational reintegration.

7. Act No. 73 of 14 December 1991 establishing certain social security entitlements, and amending and supplementing certain provisions of social security and pension legislation.

8. Government Decision No. 48 of 3 February 1992 concerning the establishment and organization of the National Institute for the Initial and Further Training of Magistrates.

9. Government Decision No. 58 of 8 February 1992 amending Government Decision No. 417/1991 concerning the establishment of the Romanian Committee on Migration Problems.

10. Government Decision No. 97 of 24 February 1992 concerning authorization to establish the university-level Franciscan Roman Catholic Theological Institute at Roman, department of Neamt.

11. Act No. 14 of 24 February 1992 relating to the organization and functioning of the Romanian Information Service.

12. Act No. 22 of 12 March 1992 amending and supplementing Decree-Law No. 118/1990 concerning the granting of certain rights to persons persecuted for political reasons by the dictatorship established on 6 March 1945, and to persons deported or held as prisoners.

13. Government Decision No. 164 of 6 April 1992 concerning authorization to establish the university-level Pentecostal Theological Institute in Bucharest.

14. Government Decision No. 165 of 6 April 1992 concerning authorization to establish the university-level Seventh Day Adventist Theological Institute in Bucharest.

15. Act No. 41 of 18 May 1992 relating to the organization and functioning of the Constitutional Court.

16. Television and Radio Broadcasting Act (No. 48) of 21 May 1992.

17. Social Security of Disabled Persons Act (No. 53) of 1 June 1992.

18. Romanian State Frontier Act (No. 56) of 4 June 1992.

19. Organization of Justice Act (No. 92) of 9 July 1992.

20. Act No. 68 of 15 July 1992 relating to the election of the Chamber of Deputies and the Senate.

21. Act No. 65 of 8 July 1992 amending and supplementing the Criminal Code in respect of certain corrupt practices.

22. Election of the President of Romania Act (No. 69) of 15 July 1992.

23. Act No. 88 of 22 July 1992 amending and supplementing provisions of the Criminal Code and the Code of Criminal Procedure.

24. Rules of organization and procedure of the Constitutional Court, Official Gazette No. 190 of 7 August 1992.

25. Government Decision No. 466 of 19 August 1992 approving the proposals of the Central Commission to draw up an inventory of State-owned goods previously owned by the Romanian (Greco-Catholic) Church United with Rome and to return them to that Church.

26. Act No. 94 of 8 September 1992 relating to the organization and functioning of the Court of Audit.

27. Act No. 104 of 22 September 1992 amending and supplementing the Criminal Code, the Code of Criminal Procedure and other legislation, and rescinding Act No. 59/1968 and Decree No. 218/1977.

28. Act No. 105 of 22 September 1992 relating to the regulation of relations in private international law.

Appended document No. 2
(see para. 4 of the report)

Statistical data concerning education in the mother tongue of minorities (school year 1991-1992)

1. Schools classified according to language of education

of institution	Total units and sections	of which: units and sections using							
		Hungarian	German	Serb	Ukrainian	Slovak	Czech	Bulgarian	Turkish
	2 831	2 428	303	42	11	38	5	2	2
ary schools	1 285	1 085	161	16	7	10	2	2	2
ary schools and r-secondary ols	1 322	1 139	127	24	3	26	3	-	-
er-secondary ols	153	135	14	1	1	2	-	-	-
tional training itutions	58	57	-	1	-	-	-	-	-
-secondary itutions	13	12	1	-	-	-	-	-	-

2. Enrolment in relation to type of institution and mother tongue

e of titution	Total students	for whom: education in							
		Hungarian	German	Serb	Ukrainian	Slovak	Czech	Bulgarian	Turkish
al	245 507	222 826	18 711	1 535	542	1 409	217	186	81
sery schools	55 827	47 530	6 847	467	310	325	72	186	81
mary and er-secondary ools	146 341	134 486	10 167	575	140	918	145	-	-
her-secondary ools	35 547	33 409	1 605	275	92	166		-	-
ational ining titutions	6 589	6 380	-	209	-	-	-	-	-
t-secondary titutions	1 113	1 021	92	-	-	-	-	-	-

3. Teachers in relation to type of institution and mother tongue

of institution	Total teachers	for education in							
		Hungarian	German	Serb	Ukrainian	Slovak	Czech	Bulgarian	Turkish
	13 974	12 714	1 041	88	25	85	11	7	3
ry-school ers	2 695	2 336	298	23	13	13	2	7	3
ry teachers	3 818	3 415	319	34	5	36	9	-	-
ers in dary and r institutions	7 461	6 963	424	31	7	36	-	-	-

Attachment No. 3
(see para. 4 of the report)

Statement made by the Government of Romania on 25 March 1992

The Government of Romania notes with deep concern the appearance in some of the publications issued in Romania of expressions of chauvinistic or anti-semitic attitudes and opinions. The Government disapproves of and condemns such expressions, together with any attempt to use the Romanian press to encourage extremist tendencies of a "legionary" or fascist nature.

Such attitudes are particularly reprehensible in that the publications in question engage in unacceptable attacks on individuals, including the diplomatic representatives of a number of countries with which Romania maintains friendly relations, attacks which the Government resolutely rejects.

The expression of such views casts an undeserved shadow over Romania and the Romanian people, who have consistently rejected chauvinistic attitudes, hatred and violence, and any extremist tendencies which are highly prejudicial to the country and damaging to its national interests. They are seriously detrimental to Romanian society, particularly at a time when it is facing major problems calling for the involvement and cooperation of all national political forces and leaders.

At the same time, the Government of Romania draws attention to the fact that the anti-semitic views expressed in these publications, together with any extremist tendencies likely to lead to a revival of fascism and "legionarism" are contrary to the Constitution, which proclaims Romania as the shared and indivisible homeland of all its citizens, without distinction as to race, nationality, ethnic origin or religion, and prohibits the fomenting of racial hatred and incitement to discrimination between Romanian citizens.

All expressions of racism represent clear abuses of the exercise of the constitutional right to freedom of expression or information, and it is therefore the duty of the public prosecutor to bring such cases before the courts to enable the appropriate legal measures to be taken.

The Government of Romania reaffirms its determination strictly to fulfil the obligations assumed under the international conventions and instruments to which it is a party and whose object is to prevent, combat and punish discrimination based on race, colour, national origin or religion, and will, as one of the main aims of its policy, ensure respect for human rights and fundamental freedoms for all citizens, without distinction as to race, ethnic origin, language or religion.

The expressions of anti-semitism and extremism are the acts of a very small number of citizens expressing personal and isolated views. For this reason, the Government of Romania is convinced that the whole of Romanian society will reject such views and will not accept opinions and attitudes which are basically contrary to the authentic values of democracy and the rule of law.

Attachment No. 4

Reply by the competent Romanian authorities
(Ref. G/SO 215/1 ROMA, 12 August 1992)

The letter from the Christian Democratic Association for the Defence of Human Rights, based in Budapest, concerning the Romanian Government's decision on the removal and appointment of officials in the prefectures of the Departments of Covasna and Harghita, is based mainly on a misunderstanding of the provisions of the Romanian Constitution and of the Local Public Administration Act No. 69, of 26 November, as well as of the essential nature of the prefectural system.

1. Under the provisions of the Romanian Constitution (art. 122) and of the Local Public Administration Act No. 69/1991 (art. 11), the Government is empowered to appoint a prefect to each department and one for the city of Bucharest. The prefect represents the Government at local level and coordinates the decentralized units of ministries and other central bodies in the local administrative districts.

As the representative of the Government, the prefect is responsible for ensuring that the activities of local and departmental councils and municipalities (elected public authorities) are in accordance with the law. The local and departmental councils and municipalities are not subordinate to prefects (Act No. 69/1991, art. 98).

In ensuring the legality of the measures adopted and promulgated by local and departmental authorities, the prefect may contest any measures which he considers illegal before the administrative court. In such cases, implementation of the contested measure is suspended (Act No. 69/1991, art. 101).

Appointment and removal of prefects (and deputy prefects) are by Government decision (Act No. 69/1991, art. 96).

2. By its decision No. 388 of 18 July 1992, based on the provisions of the Constitution and the law, the Romanian Government removed Mr. Fodor Francisc, and Mr. Topolinschi Ioan-Mugur from the offices of Prefect and Deputy-Prefect of the Department of Covasna.

Mr. Telea Ioan-Dam and Mr. Fodor Francisc were appointed Prefect and Deputy-Prefect of the Department. Similarly, by Romanian Government decision No. 389, of 18 July 1992, Mr. Pataki Emeric and Mr. Urzica Nicolae Baciu were replaced as Prefect and Deputy-Prefect of the Department of Harghita by Mr. Vosloban Doru-Ioan and Mr. Vardai Gyorgy.

In accordance with the provisions of the Constitution and the law, the appointment and removal of prefects and deputy-prefects are not based on ethnic criteria, since they have no connection with the introduction of local autonomy or with ethnic representation of the population of the department.

Prefectural appointments are based on political and efficiency considerations and on the current political makeup of the Government or the

Government coalition (Government coalition including the National Salvation Front, the National Liberal Party, the Romanian Agrarian Democratic Party, the Ecological Party). It is quite in order and democratic for the Government in office to appoint ministers and prefects reflecting the composition of the Government coalition.

The Government may, of course, appoint independent persons to these offices or even representatives of the opposition, although it has no obligation to do so, and certainly no obligation to be guided by ethnic criteria.

Similar regulations are in fact applied in other countries where the prefectural system exists and has the same role as in Romania (e.g. France).

The two prefects, Mr. Fodor Francisc and Mr. Pataki Emeric, who are of Magyar ethnic origin and represent the Democratic Union of Hungarians of Romania (UDMR) took up their posts before the adoption of the new Romanian Constitution. Following the entry into force of the Constitution, their removal from office and the appointment of other prefects, about which there was nothing unusual, since the same procedure was followed in other departments, was a constitutional measure which merely placed the situation on a legal footing so as to enable the representatives of the current Government coalition to take up prefectural duties in the two departments, just as in the other 38 departments of Romania and the city of Bucharest.

The new Government may well appoint new prefects to the two departments, as in the other departments, to take account of the new political configuration resulting from the elections of 27 September 1992.

3. Conclusions

(a) The appointment of new prefects for the departments of Covasna and Harghita and the removal of their predecessors were based on the constitutional principle which provides for the appointment of prefects by the Government.

The procedure adopted is in accordance with the provisions of the Constitution and of the Local Public Administration Act No. 69/1991, the legal norms defining the nature of the office of prefect, as a representative of the Government and a senior local public official whose principal function is to ensure that the activities of local authorities are in accordance with the law and that the principles of a constitutional State are observed.

(b) The executive power has the responsibility of governing and, as such, has the duty, obligation and authority to appoint its local representatives on the basis of political criteria (taking account of the configuration of the political parties making up the Government) and of competence, and not on the basis of origin or ethnic group. At the same time, the Government may at any time remove prefects from office without having to justify its decision.

(c) The appointment and removal of the prefects of Covasna and Harghita are in no way related to the question of the rights of individuals who are members of an ethnic, national, linguistic or religious minority and therefore cannot constitute "violations of the basic rights of these two prefects".

Eligibility for appointment (we stress "appointment" and not "election") as a prefect is not an individual right and is not related to the question of preserving, developing and expressing the ethnic, cultural, linguistic and religious identity of persons who are members of minorities.

Furthermore, if one of the two prefects removed from office believes his rights as a Romanian citizen have been violated, he may avail himself of the judicial administrative procedure.

Annex II

INFORMATION PROVIDED BY THE INTERNATIONAL LABOUR OFFICE

A. Adoption of a new national Constitution and various legislative acts

1. After examining the new Romanian Constitution adopted by referendum on 8 December 1991, the Committee of Experts of the International Labour Organisation (ILO), at its session from 12 to 15 March 1992, made a number of observations addressed to the Romanian Government. The reports awaited from the Government have since been received by ILO and will be examined by the Committee of Experts at its March 1993 session. In the course of its work in 1992, the Committee took note in particular of the constitutional provisions concerning the free choice of occupation and workplace (art. 38), and the prohibition of forced labour (art. 39).

2. The Committee also noted the repeal of Decree No. 153 of 24 March 1970, under which categories of persons with a parasitic or anarchical way of life were liable to criminal penalties, and its replacement by Act No. 61 of 27 September 1991 laying down penalties for acts in breach of the rules of social cohabitation, of order and of the public peace.

3. The Committee also notes the provisions of Act No. 37 of 20 February 1991 on land tenure, which reorganizes the system of property, in particular by reintroducing the regime of private property, specifically in favour of members of agricultural cooperatives.

4. In addition, the Committee took note of the texts of the three basic acts of 1991 on labour adopted by the Romanian Parliament, namely, Act No. 54 regarding trade unions, of 1 August; Act No. 13 on collective labour agreements, of 8 February; and Act No. 15 on the settlement of collective labour disputes, of 11 February. The Committee observed with interest that the new texts mentioned above, in conjunction with the repeal of several legislative provisions on which it had commented earlier, changed the general orientation of the industrial relations system, established trade-union pluralism and the independence of the trade-union movement and recognized the principle of workers' right to strike.

B. Examination of various legislative provisions

5. In their observations, the experts of the Committee drew the Romanian Government's attention to the need to clarify or supplement some of the newly-introduced legislation. The legislation in question concerned the freedom of association and the protection of the right to organize (Convention No. 87); discrimination, employment and occupation (Convention No. 111); employment policy (Convention No. 122); workers' representatives (Convention No. 135); and the minimum working age and child labour (Convention No. 138).

1. Freedom of association and protection of the right to organize

6. The Committee emphasized to the Romanian Government the importance of certain aspects of the legislation, including: the exclusion of certain categories of workers from the right to organize; the free election of union

representatives, including for the conciliation process; the voting requirements for, and the objectives of, strikes; binding arbitration; financial liability of the organizers of a strike; restrictions and prohibitions of the right to strike, essential services and compensatory bargaining mechanisms; and provisions concerning the acquisition of legal personality.

7. The Committee also wished to know whether legislation concerning the rights and obligations of employers and their organizations had been adopted or was being prepared and whether the Act on the organization of labour and labour discipline in State socialist units (Act No. 1) had been repealed and replaced.

8. Regarding the right of workers without distinction whatsoever, to establish organizations of their own choosing (art. 2 of Convention No. 87), article 5 of Act No. 54 provides, among other things, that "employees who hold executive office or offices involving the exercise of public authority within parliament, the Government or ministries, or any central agency of the administration of the State, the prefecture or a municipality, or who hold the office of prosecutor or judge ... may not group together in a union."

9. According to article 9 of the Convention, only the armed forces and the police may be excluded from the right to organize. Persons occupying managerial positions, in both public and private sectors, should be entitled at least to form their own organizations (see the General Survey on Freedom of Association and Collective Bargaining of 1983, para. 89).

10. Regarding the right of workers to elect their representatives (art. 3 of the Convention), article 9 of Act No. 54 reserves eligibility for trade-union leadership for persons with Romanian citizenship who are employed in the production unit and have never been the subject of penal sanctions. A similar provision is contained in article 13 (3) of Act No. 15 regarding the election of the delegates of workers in the conciliation process.

11. The Committee recalls that, to be consistent with the Convention, legislation should allow foreign workers to be eligible for trade union office, at least after a reasonable period of residence in the host country; furthermore, a conviction on account of offences the nature of which is not such as to call into question the integrity of the person concerned and is not such as to be prejudicial to the exercise of trade union functions, should not constitute grounds for disqualification from trade union office (General Survey, para. 164); lastly, as regards the requirement of belonging to the enterprise in order to be eligible for trade union office, it would be desirable either to admit as candidates persons who have previously been employed in the enterprise, or to exempt from the requirement of belonging to the enterprise a reasonable proportion of the officers of an organization.

12. In addition, the Committee requests the Government to indicate whether there exist provisions for the choice of the delegates of the workers in the conciliation process, if none of them satisfies the conditions imposed by article 13(3) of Act No.15 (for example, if there is no worker with three years' seniority, in an enterprise which has been in operation for more than three years) which might stop the conciliation process.

13. Regarding the right of trade union organizations to organize their administration and activities and to formulate their programmes (art. 3 of the Convention), section 20(1) of the Act provides that the decision to call a strike shall be taken by the trade union "with the agreement of at least half of its members". The Committee points out, on the one hand, that the above provision does not specify how the agreement in question shall be expressed and supervised and, on the other hand, that it may be difficult for a trade union with a large membership dispersed in different workplaces or locations to obtain the agreement of at least 50 per cent of the workers, which could lead to a serious restriction of the right to strike. The provision of section 20(1) in fine, which lays down that the decision shall be taken by a majority of the voters in the event of a secret ballot, is in this sense more compatible with the principles of freedom of association.

14. Section 24(1) provides that strikes may be called only for the purpose of defending employees' occupational interests which are of an economic and social nature, and section 24(2) provides that the aims of the strike may not be political; furthermore, section 47(1) provides for heavy penalties, including the possibility of prison sentences of from three to six months, for organizers who have called a strike in violation of section 24(2).

15. The Committee recalls that, even if strikes that are purely political in character do not fall within the scope of the principles of freedom of association, a trade union's activities cannot be restricted solely to occupational questions; trade unions should therefore be able to express their views publicly on a Government's economic and social policy.

16. Furthermore, section 45(4) provides that, if one third of the normal activities of essential services is assured, strikes are authorized in the following services: health, pharmaceuticals, teaching, telecommunications, broadcasting, rail transport, including repairs of rolling stock, river transport and civil aviation units; State units responsible for public transport, for hygiene in public places, and for supplying the population with bread, milk, meat, gas, electricity, heating and water.

17. Section 47 provides for heavy penalties for violations of these provisions (imprisonment for three to six months, or a fine of 2,000 to 7,000 lei, or a harsher penal sanction).

18. In this connection, the Committee wishes to recall the principles established by the supervisory bodies:

(a) The right to strike is one of the essential means available to workers and their organizations for the promotion of their economic and social interests;

(b) Restrictions or prohibitions should be limited to public servants acting in their capacity as agents of the public authority or to services whose interruption would endanger the life, personal safety or health of the whole or part of the population;

(c) If strikes are restricted or prohibited in the public service or essential services, guarantees must be afforded to protect workers who are

thus denied one of the essential means of defending their occupational interests. Restrictions should be offset, for example, by adequate impartial conciliation and arbitration procedures, in which the parties concerned can take part at every stage. Arbitration awards should be binding on both parties and, once rendered, should be rapidly and fully implemented;

(d) If a minimum service mechanism is adopted, it should be restricted to operations that are strictly necessary to avoid endangering the life, personal safety or health of the population; moreover, workers' organizations should be able to participate in defining the minimum service;

(e) Lastly, penal sanctions should be imposed only where there are violations of strike prohibitions which are in conformity with the principles of freedom of association; in these cases, the sanctions should be proportionate to the offences committed, and penalties of imprisonment should not be imposed in the case of peaceful strikes.

2. Discrimination (employment and occupation)

19. The Commission of Inquiry constituted by the Governing Body of the International Labour Office (ILO) following the complaint filed in 1989 by a number of workers' delegates to the International Labour Conference against the Government of Romania concluded in its report of May 1991 that discriminatory practices based on political opinion and social origin might continue to occur in practice; that discrimination based on national extraction and race continued to exist to a serious extent against the Roma and, to a lesser extent, against the Magyars; and that no policy to promote equality of opportunity and treatment in employment and occupation, as called for in the Convention, existed.

20. The Commission recommended, as essential premises for the application of the Convention, the strengthening of the concept of the rule of law in Romanian society; the adoption of the principle of separation of powers; the establishment of an independent and objective judiciary including just rights of access, appeal and due process in judicial proceedings; and the observance of human rights, including freedom of association and of collective bargaining. The Commission specifically recommended that measures should be taken as soon as possible to end all discrimination in employment and occupation based on any of the criteria set out in the Convention, and in particular on political opinion; to dismantle the policy of assimilation and discrimination against minorities; to redress the effects of the former policy of discrimination; and to formulate and promote a policy of equality of opportunity and treatment in employment, occupation, training and education, including the development of a climate of tolerance for all groups of Romanian citizens regardless of their race, religion or national extraction. The Commission further recommended a number of specific actions to be taken to accomplish the above aims and that detailed information on all relevant developments be given in the annual reports on the application of Convention No. 111, submitted under article 22 of the ILO Constitution.

21. Concerning measures to establish the political, legal and social framework necessary to apply the Convention, the Committee notes with interest that in the new Constitution of 8 December 1991, political pluralism is

guaranteed; the separation of the legislative, executive and judicial powers is set out; a Defender of the People is to be appointed to defend the rights and liberties of the citizens; free access to justice is guaranteed along with the right to have an interpreter before the court; and the independence of judges and due process guarantees are established, as well as the right to personal freedom and the right to choose one's residence. The Committee also notes with interest the Constitutional provisions concerning the incorporation of international treaties, to which Romania is a party, into national law (art. 11) and the requirement for the rights and liberties of citizens under the Constitution to be interpreted and applied in conformity with the Universal Declaration of Human Rights and other treaties, and the priority given to international human rights treaties over national laws in cases of inconsistency (art. 20).

22. In its report, the Commission stressed the need to develop a climate of mutual tolerance in the country. In this respect, the Committee expresses its interest in article 30 of the new Constitution which establishes rights of freedom of expression but at the same time declares that such freedom shall not be prejudicial to one's dignity, honour, personal privacy and the right to one's own image and it outlaws instigation to national, racial, class or religious hatred. The Committee also emphasizes the importance it attaches to the declaration published by the Government on national minorities. The Committee requests the Government to report on the results these efforts have had on public opinion and to supply details on other measures contemplated or taken to foster understanding of the principles of equality of opportunity and treatment and tolerance between various groups of the population.

23. With regard to discrimination on the grounds of political opinion and social origin, article 4(2) of the Constitution of 8 December 1991 prohibits discrimination on all the grounds set out in Article 1, paragraph 1(a) of the Convention, including the grounds of political opinion and social origin. The Committee also notes with satisfaction that section 2 of the Labour Code as amended by Decree No. 147 of 1990, now also refers to political convictions and social origin as grounds on which discrimination is prohibited and that Act No. 30 of 15 November 1990, concerning the recruitment of employees on the basis of abilities, prohibits distinctions based on political, ethnic or denominational (religious) criteria, sex, age or economic situation.

24. Concerning discrimination on the grounds of national extraction and race, the Committee recalls that in previous comments it drew attention to the discriminatory effect of the former regime's policy of forced assimilation including discrimination against minorities in access to employment, training and education, largely on account of linguistic problems; and to resettlement policies affecting the Magyars (Romanian citizens of Hungarian origin). The Commission of Inquiry found conclusive evidence of the existence of discrimination in employment and occupation affecting members of national minorities on the grounds of national extraction and race. The Roma minority, and to a lesser extent the Magyar minority, are the two groups against whom discrimination is systematically practised. The repeal of the provisions respecting the arbitrary posting of graduates and the abolition of discriminatory administrative practices had contributed to the elimination of certain situations in which there had been complaints. However, the Commission observed that these measures alone have not restored equality for

the Magyars. With regard to the Roma, the Committee notes that the Commission of Inquiry concluded that no appreciable improvement in their situation had occurred since the events of 1989, and that direct discrimination appears to continue and is probably aggravated under the influence of the defamatory campaigns conducted by the mass media, which treat the Roma as scapegoats responsible for all past, present and future ills.

25. The Commission of Inquiry recommended a series of measures to be taken by the Government to improve the situation of these minorities, including the adoption of a language policy which would take into consideration the linguistic needs of members of these communities and facilitate their access to education, training and employment; the adoption of a national policy recognizing the cultural identity of the minorities; and the eradication of negative attitudes which had been particularly cultivated against the Roma.

26. The Committee thus notes with interest the provisions in the new Constitution which prohibit discrimination on the grounds of race, nationality or ethnic origin (art. 4(2)), and which recognize and guarantee, to any person belonging to a national minority the right to the preservation, development and expression of one's ethnic, cultural, linguistic and religious identity (art. 6(1)); and the requirements that protective measures taken for the national minorities shall conform to the principles of equality and non-discrimination in relation to other Romanian citizens (art. 6(2)).

27. The Committee notes with great interest the Declaration of the Government on national minorities, published in a national newspaper on 4 December 1991. In this Declaration, the Government recalls that the rights and obligations and freedoms established in its new democracy apply to all citizens including those members of minorities, and it pledges to guarantee the constitutional rights of minorities, including the preservation of their cultural identity and the right to study in their mother tongue. Persons belonging to the minority will be protected against attempts at forced assimilation and measures of exclusion and segregation. The Government recalls the penal sanctions against acts of violence committed against a person of another nationality on the basis of their nationality or ethnic origin and it reaffirms its intention to rigorously apply the law in this respect. It also pledges to denounce and combat nationalist hatred, fanaticism, racism and anti-semitism.

28. With reference to linguistic needs, the Committee notes with interest article 32 of the new Constitution which provides, inter alia, that education in all grades may be conducted in widely spoken foreign languages other than Romanian and that any person who belongs to a national minority is guaranteed the right to learn and to be educated in his mother tongue, pursuant to regulations. The Committee requests the Government to provide information on the manner in which education in the mother tongue of the Magyar and Roma minorities is guaranteed in practice and to supply copies of any regulations issued pursuant to this provision.

29. With respect to specific measures to improve the social and economic situation of the Roma, the Committee notes with interest the information provided in the Government's report on the adoption of a programme aimed at

of employment. The programme includes the hiring of 22 labour inspectors (13 of whom have already been engaged), constant contact and cooperation with the leaders of the Roma communities, the holding of training and retraining courses for unemployment Roma, the institution of an interministerial commission, a study on the construction of housing for the Roma, integrating the Roma into legal lucrative activities and collecting data on the Roma. The Government indicated that the census held in January 1992 will contribute substantially to this collection of data.

30. Regarding the situation of women workers, the Committee notes that it has not received information on the promotion of equality between men and women for a number of years. It requests the Government to provide information on the measures taken or contemplated to prevent discrimination on the grounds of sex and to promote equality of opportunity and treatment between men and women, and on the results obtained with regard to access to vocational training, to employment and to a particular occupation and terms and conditions of employment.

3. Minimum age

31. Under article 45(4) of the Romanian Constitution, minors under the age of 15 years may not be employed as wage earners. The Committee recalls that Romania, in accordance with article 2, paragraph 1 of the Minimum Age Convention (No. 138), on ratifying the Convention, specified the minimum age of 16 years for admission to employment or work. Furthermore, since the Convention specifies that no one under the minimum age shall be admitted to employment or work in any occupation, its scope is not restricted to remunerated work but covers all activities of an economic nature, regardless of the legal definition of the employment concerned.

32. The Committee asks the Government to indicate the measures adopted to ensure, in both law and practice, that the minimum age of 16 years is fixed for admission to remunerated and unremunerated employment. It also asks the Government to provide information on the practical application of the legislation giving effect to the Convention, such as statistical data on employment and school attendance of minors under 16 years of age, extracts of inspection service reports or particulars of the number and nature of violations recorded.

Annex III

INFORMATION PROVIDED BY NON-GOVERNMENTAL ORGANIZATIONS IN CONSULTATIVE STATUS (CATEGORY II)

Information received from Amnesty International

A. Introduction

1. In its publication Concerns in Europe covering the period from May to October 1992, Amnesty International reports allegations of torture and ill-treatment of members of the Roma community and ethnic Hungarians. The organization relates the following two incidents.

2. Sergeant-Major Gheorghe Nastase, belonging to military police unit UM 02180, based in Rahova, and George Bränescu, a Rom, resident of the same district, reportedly had a fight on 1 July 1992 that resulted in the hospitalization of the sergeant-major. The incident is said to have been investigated the same evening and on the morning of 2 July by a team from the Ministry of Interior and a group of soldiers from unit UM 02180. On 3 July, between 40 and 50 soldiers of the same unit allegedly went to the market at Piata Rahova, wearing camouflage uniforms and black headmasks and armed with rubber truncheons, chairlegs and pickaxes, and attacked the Roma who were at the market that day and beat them. It is stated that 13 people, including Gheorghe Mirchea, Ion Constantin, Maria Mircea, Anisoara Duman and Stefan Marcu, were struck and sustained injuries to the body and face. Two police officers and a unit of the Ministry of Interior stationed in Piata Rahova apparently did not intervene to protect the victims.

3. At around midnight on 1 May 1992, in the village of Lunca de Jos (Harghita), two police officers and a civilian reportedly broke into the home of Béla Tankó, where one of Tankó's friends, Filip Póra, was also present, and brutally beat the two persons, causing Tankó to lose consciousness. The police allegedly took a large sum of money belonging to the second victim. Although several neighbours had witnessed the reported ill-treatment of the two persons, the police are said to have made little effort to identify those responsible.

4. The organization also describes a case of alleged police brutality on 18 June 1992 in which Alexandru Tatulea, a student at the Faculty of Plastic Arts in Bucharest, was seriously injured by a police officer and a soldier who had asked to see his identity papers. Not being able to produce them, he was allegedly beaten by the two officers and then threatened with a pistol. A shot was unfortunately fired and the victim was reportedly wounded seriously in the head.

5. The police officer allegedly responsible for the incident was arrested in June, but released in October 1992. Thereafter, he reportedly went, together with four other police officers, to the home of Alexandru Tatulea to serve him with a summons to testify before the Military Prosecutor and endeavoured to intimidate him into withdrawing all charges.

Annex IV

INFORMATION PROVIDED BY OTHER NON-GOVERNMENTAL ORGANIZATIONS

1. Information received from International Helsinki Federation of Human Rights

1. In the documentation submitted by International Helsinki Federation of Human Rights (IHF), this organization also expresses its concerns about the plight of the Roma. It believes that, over the past few years, abuses have been committed against the Roma community, on many occasions with the active participation or tacit approval of the police.

2. The Federation also refers to the adoption by the Commission on Human Rights, in 1992, of resolution 1992/65 entitled "Protection of Roma (gypsies)" and to the work of the Conference on Security and Cooperation in Europe, in 1992, which in particular recommended the establishment of programmes to promote the integration of Roma in the life of society. In the Federation's view, the Roma will always be faced with major difficulties, due mainly to their poverty, low standard of education and particularly high rate of unemployment.

3. Following attacks on Roma homes in various parts of the country, the Federation cites the example of the village of Mihail Kogalniceanu, where the rebuilding of houses for some 200 Roms began in early 1992 with financial support from the German foundation "Zentralrat Deutscher Sinti und Roma". In connection with the rebuilding, a French-sponsored social assistance project has enabled the Roma community to bring their concerns before the local authorities. However, it is stated that hundreds of Roms are still forced to spend another winter in the ruins of their homes or under tents, with no aid from the Romanian Government.

4. The Federation underlines the failure to implement standards guaranteeing the rights of the Roma, including their right to non-discrimination, in the field of law enforcement and the judicial process. Romania's new Constitution sets out its international human rights obligations, particularly in article 11, which provides that treaties form an integral part of domestic law (see art. 26 of the International Covenant on Civil and Political Rights and art. 5 (a) of the International Convention on the Elimination of All Forms of Racial Discrimination). Few prosecutions have been brought against those allegedly responsible for the attacks on the Roma. Reportedly the Roma have been encouraged not to file charges against their assailants and in some cases their silence has been the price for rebuilding their homes faster.

2. Information received from Helsinki Watch

5. Helsinki Watch believes that ethnic minorities in Romania continue to be victims of xenophobia, various forms of discrimination and sometimes ill-treatment.

6. The organization refers to local elections held on 9 February 1992 and the balloting which took place later at Tîrgu Mures for the election of the mayor. It states that the Hungarian candidate, Istvan Kiraly (Democratic

Union of Hungarians of Romania), was barred from running by a local court decision motivated by anti-Hungarian sentiment. This sentiment is said to have been based on allegations that the candidate had taken part in the events at Tîrgu Mures in 1990 and that, during the recent electoral campaign, he had exhibited an attitude of partiality towards his Hungarian colleagues, inciting an anti-Romanian attitude.

7. Helsinki Watch also reports that the mayor of Cluj, Gheorghe Funar, banned the use of Hungarian and bilingual signs and fined ethnic Hungarians for posting Hungarian signs at their places of business. It states that, on 28 April 1992, the mayor issued an executive order requiring anyone wishing to hold a meeting to notify the town hall, provide the names of the organizers and participants and indicate the purpose of the meeting and its location and duration. This is said to have prevented several organizations perceived as supportive of the Hungarian minority's interests from holding meetings. In some cases, and in particular when a local organization sought to meet representatives of a foreign foundation, the mayor of Cluj reportedly insisted that "observers" from his office should be present.

8. According to information obtained by Helsinki Watch, detainees in police stations in 1992 continued to be mistreated during initial interrogation. Some detainees reported that they had been beaten while tied to a stick suspended between two tables or had been restrained by handcuffs and leg-irons. Most of them said that they had been interrogated and had had their statements taken without counsel present.

9. In July 1992, Helsinki Watch sent a mission to Romania to investigate the treatment of detainees in police lock-ups. A newsletter issued by the organization in November 1992 criticized the cramped and dirty cells, lack of ventilation, infrequent opportunities for detainees to exercise and the continued use of physical restraints as a means of punishment.

10. In a report entitled "Prison Conditions in Romania", published in June 1992, Helsinki Watch examines the penitentiary system. It says that, although the Ministry of Justice and the Directorate of Prisons appeared to be committed to modernizing and humanizing the prisons, many aspects of the law are not being implemented. That would seem to be the case regarding the prohibition of the use of physical restraints and the ban on humiliating treatment such as shaving detainees' heads and forcing them to face the wall in the presence of visitors or prison personnel.